



DEPARTMENT of BUDGET and MANAGEMENT

INVITATION FOR BIDS (IFB)

SOLICITATION NO. # 050B7400009

Issue Date: September 21, 2017

SPECIMEN COLLECTIONS

NOTICE

A Prospective Bidder that has received this document from the Department of Budget and Management's website, <https://emaryland.buyspeed.com/bsol/>, or a source other than the Procurement Officer, and that wishes to assure receipt of any changes or additional materials related to this IFB should immediately contact the Procurement Officer and provide the Prospective Bidder's name and mailing address so that addenda to the IFB or other communications can be sent to the Prospective Bidder.

Minority Business Enterprises Are Encouraged to Respond to this Solicitation

**STATE OF MARYLAND
NOTICE TO VENDORS**

To help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, take a few minutes and provide comments and suggestions regarding this solicitation. Please return your comments with your response. If you have chosen not to respond to this solicitation, please email or fax this completed form to the attention of the Procurement Officer (see Key Information Sheet below for contact information).

Title: SPECIMEN COLLECTIONS

Solicitation No: # 050B7400009

1. If you have chosen not to respond to this solicitation, please indicate the reason(s) below:

- Other commitments preclude our participation at this time.
- The subject of the solicitation is not something we ordinarily provide.
- We are inexperienced in the work/commodities required.
- Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
- The scope of work is beyond our present capacity.
- Doing business with the State of Maryland is simply too complicated. (Explain in REMARKS section.)
- We cannot be competitive. (Explain in REMARKS section.)
- Time allotted for completion of the Bid is insufficient.
- Start-up time is insufficient.
- Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
- Bid requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
- MBE or VSBE requirements. (Explain in REMARKS section.)
- Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
- Payment schedule too slow.
- Other: _____

2. If you have submitted a response to this solicitation, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.)

REMARKS:

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

E-mail Address: _____

**STATE OF MARYLAND
DEPARTMENT of BUDGET and MANAGEMENT
IFB KEY INFORMATION SUMMARY SHEET**

Invitation for Bids: SERVICES: SPECIEMEN COLLECTIONS

Solicitation Number: # 050B7400009

IFB Issue Date: September 21, 2017

IFB Issuing Office: DEPARTMENT of BUDGET and MANAGEMENT

Procurement Officer: Mike Yeager
45 Calvert Street, Room #144
Annapolis, MD 21401
Phone: (410) 260-6014 Fax: (410) 974-3274
e-mail: mike.yeager@maryland.gov

Bids are to be sent to: Department of Budget and Management
45 Calvert Street, Rm. 144
Annapolis, MD 21401
Attention: Mike Yeager

Pre-Bid Conference: October 11, 2017, 10:00 AM (Local Time)
MDOT Headquarters
7210 Corporate Center Drive
Moser Conference room, 3rd Floor
Hanover, MD 21076

Bid Due (Closing) Date and Time: October 30, 2017 2:00 PM (Local Time)

Public Bid Opening: October 30, 2017 2:30 PM (Local Time)
Department of Budget and Management
45 Calvert Street, Conference Rm. 163
Annapolis, MD 21401

MBE Subcontracting Goal: 0 %

VSBE Subcontracting Goal: 0 %

Contract Type: Indefinite quantity with fixed unit prices as defined
in COMAR 21.06.03.06.A(2) and 21.06.03.02.A(2)

Contract Duration: 1/1/2018 – 12/31/2022

SBR Designation: No

Federal Funding: No

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SECTION 1 – MINIMUM QUALIFICATIONS

1.1 Bidder Minimum Qualifications

The Bidder shall provide with its Bid proof that the following Minimum Qualifications have been met:

- 1.1.1 The Bidder shall have direct experience in providing Specimen Collection Services. As proof of meeting this requirement the Bidder shall provide references from three (3) projects over \$25,000 each from current and/or previous customers within the immediate past three (3) years who are capable of documenting direct experience by the Bidder in providing Specimen Collections. Each of the three (3) references shall include:
 1. Name of organization;
 2. Name, title and telephone number of point of contact for organization;
 3. Type and duration of contract, products and/or services provided, scope of the contract, geographic area supported, etc; and
 4. Explanation of why the Bidder is no longer providing services to the organization, if the Bidder is no longer serving this client.

- 1.1.2 The Bidder shall also have direct experience in providing Emergency Specimen Collections within a four hour time period. As proof of meeting this requirement the Bidder shall provide references from three (3) current and /or previous customers within the immediate past three (3) years who are capable of documenting direct experience by the Bidder in providing Emergency Specimen Collections within a four hour time period. At least one reference within the immediate past three years must confirm a minimum of **\$500** worth of emergency collection experience. Each of the three (3) references shall include:
 1. Name of organization;
 2. Name, title and telephone number of point of contact for organization;
 3. Type, value, and duration of contract, products and/or services provided, scope of the contract, geographic area supported, etc; and
 4. Explanation of why the Bidder is no longer providing services to the organization, if the Bidder is no longer serving this client.

SECTION 2 – CONTRACTOR REQUIREMENTS: SCOPE OF WORK

2.1 Summary Statement

- 2.1.1 The State tests applicants and employees of State Agencies for the illegal use of drugs to confirm that State employees are not impaired by the illegal use of drugs in the workplace. This practice ensures compliance with the Federal Omnibus Drug Abuse Act of 1988, which requires any State receiving federal funds to establish a drug-free workplace. The Act also requires any State that receives federal funds to have a policy on the use of substances, an employee assistance program and a procedure for employees to report their convictions. The Contract to be awarded under this IFB does not cover applicants and employees that are covered by U.S. Department of Transportation drug testing requirements.
- 2.1.2 The Department is soliciting bids to obtain a Contractor to collect specimens from applicants and employees to test for the illegal use of drugs. These specifications are provided for the purpose of requesting bids to administer a centralized drug testing program (urine specimen collection only) for State job applicants and employees for five years commencing on or about January 1, 2018. The Contractor will ship the collected specimens to be analyzed to the State’s Forensic Toxicology Drug Testing Lab (FTDTL), with postage being paid by the State’s FTDTL; this lab testing service is provided through a separate State contract with the FTDTL.
- 2.1.3 The Department intends to make a single Contract award with regional pricing as a result of this IFB to provide statewide coverage.
- 2.1.3.1 Regions;
- Region I-Central Region
 - Anne Arundel County
 - Baltimore City
 - Baltimore County
 - Carroll County
 - Harford County
 - Howard County
 - Montgomery County
 - Prince George’s County
 - Region II-Western Region

- Allegany County
- Frederick County
- Garrett County
- Washington County

- Region III-Eastern/Southern Region
 - Calvert County
 - Caroline County
 - Cecil County
 - Charles County
 - Dorchester County
 - Kent County
 - Queen Anne's County
 - Somerset County
 - St. Mary's County
 - Talbot County
 - Wicomico County
 - Worcester County

2.1.4 A Bidder, either directly or through its subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation and the successful Bidder (the Contractor) shall remain responsible for all aspects of Contract performance regardless of subcontractor participation in the work.

2.1.5 Maryland county, municipal, and other non-State of Maryland governments or government agencies and not-for-profit entities within the State of Maryland may purchase from the Contractor goods or services covered by this Contract at the same prices chargeable to the State. All such purchases by non-State of Maryland governments, government agencies or not-for-profit entities:

- (1) Shall constitute Contracts between the Contractor and that government, agency or entity;
- (2) Shall not constitute purchases by the State or State agencies under this Contract;
- (3) Shall not be binding or enforceable against the State; and

(4) May be subject to other terms and conditions agreed to by the Contractor and the purchaser. The Contractor bears the risk of determining whether or not a government, agency or entity with which the Contractor is dealing is a State agency.

All Contract prices, terms, and conditions must be provided to any Maryland local government or not-for-profit entity requesting services under this Contract.

2.2 Background and Purpose

The State tests employees and applicants for the illegal use of drugs in the following situations: random, reasonable suspicion, pre-employment, promotion, demotion, incident triggered (accident or unsafe practice), transfer into a sensitive position or classification, disclosure of participation in rehabilitation program, disclosure of arrest for controlled dangerous substance offense; after rehabilitation and in conjunction with certain personnel actions. The Contract to result from this IFB will provide for Statewide urine specimen collection for all State agencies except those covered by U.S. Department of Transportation drug testing requirements. The Contractor shall provide all labor, materials as described in 2.3.5.1.2 (items 9&10) and equipment necessary for the on-site collection of the specimens and facilitate shipping of the specimens from the State-designated collection sites to the FTDTL. Attachment S contains a list of locations designated as collection sites.

The number of specimens collected under the current Contract **averaged 4015 per year or 335 per month** for each year over a four year period. The monthly specimen collection range was from 143 to 652 during this period. The Department does not guarantee a minimum or maximum number of specimen collections in the performance of this Contract.

Attachment P (Specimen Collection – Historical Usage Calendar Year 2016) provides detailed information on the State’s usage from January 1, 2013 through December 31, 2016. Please review Attachment P carefully to ensure a thorough understanding of the requirements of this Contract.

2.3 Scope of Work - Requirements

The on-site collection and submission of specimens shall be conducted in accordance with SAMHSA’s Urine Specimen Collection Handbook/Drug Testing Guidelines for single specimen collections (Attachment Q), as well as COMAR 17.04.09 (Attachment R) and any other applicable Maryland laws, regulations and policies, all of the foregoing as from time to time amended. The State Medical Director functions as the MRO for the State’s drug testing program.

2.3.1 Contractor Personnel

- 2.3.1.1 Prior to undertaking duties under this Contract, all assigned specimen collectors shall meet the training requirements specified in §40.33 of 49 CFR Part 40 as updated from time to time, and shall maintain compliance with these training requirements throughout the duration of this Contract. The Contractor shall submit certification of compliance with this provision to the Contract Manager as to each Collector no later than ten (10) business days of the Notice to Proceed and annually thereafter on the Contract anniversary date.
- 2.3.1.2 Within ten Business Days after Contract Award, the Contractor shall submit a Communications Plan to the Contract Manager. This Plan shall include the names, phone (including cell phone) numbers and e-mail addresses for all key contact personnel to facilitate communications with the Contractor. The Plan shall designate a Scheduler, who will be available during State Business Hours to work with ATRs to schedule Collection Occurrences in a timely and orderly manner. The Plan shall also identify a minimum of two key contact personnel (primary and secondary, one of whom may also be identified as the Scheduler) who are available after State Business Hours to accommodate requests for after-hours Collection Occurrences. Updated information shall be submitted to the Contract Manager as often as necessary. The State reserves the right to approve the individual(s) designated as Scheduler(s).
- 2.3.1.3 The Contractor shall collect and process a drug and alcohol test for each Collector assigned to perform Collection Occurrences under this Contract prior to any Collector providing services under this Contract and annually thereafter, by a company that is not owned by or affiliated with the Contractor. The Contractor shall provide a written affidavit to the Contract Manager, prior to any Collector providing services under this Contract and annually thereafter on the Contract anniversary date, certifying that a negative drug and alcohol test finding has been obtained for each Collector. The negative drug and alcohol test shall accompany the written affidavit. The State reserves the right to reject any Collector who fails to meet the requirements of the IFB.

The administered non-regulated drug testing requirements will be consistent with the State's policy for the testing of State applicants/employees as updated from time to time. The current policy is identified in COMAR 17.04.09 (Attachment R) and the chart below:

DRUGS	INITIAL SCREENING LIMITS	CONFIRMATION TESTING LIMITS
Amphetamines	1,000 ng/mL	500 ng/mL
Barbiturates	200 ng/mL	200 ng/mL
Benzodiazepines	200 ng/mL	100 ng/mL
Cocaine	300 ng/mL	150 ng/mL
Opiates	300 ng/mL	300 ng/mL
PCP (Phencyclidine)	25 ng/mL	25 ng/mL
Marijuana	50 ng/mL	15 ng/mL

For drug testing of the Contractor’s personnel, the Contractor shall follow the most current Drug Testing Guidelines (Attachment Q) for testing and reporting of specimens.

2.3.1.4 The Contractor’s on-site personnel shall wear appropriate business attire at all times while performing Collection Occurrence duties under this contract (i.e, no jeans, shorts, open-toe shoes, flip-flops or business inappropriate attire).

2.3.1.5 Physical Security:

2.1.1.5.1 Each person who is an employee or agent of the Contractor or subcontractor shall display his or her company ID badge at all times while on State premises. Upon request of State personnel, each such employee or agent shall provide additional photo identification.

2.1.1.5.2 At all times at any facility, the Contractor’s personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badging, and wearing the badge in a visual location at all times.

2.3.2 Substitution of Personnel

2.3.2.1. Key Personnel for the Contract that results from this solicitation will be the Contractor’s Representative or Contract Manager.

2.3.2.2 If the solicitation requires that a particular individual or personnel be designated by the Bidder to work on the Contract, any substitution of personnel after the Contract has commenced must be approved in writing by the Contract Monitor prior to the substitution. If the Contractor substitutes personnel without the prior written approval of the Contract Monitor, the Contract may be terminated for default which shall be in addition to, and not in lieu of, the State’s remedies under the Contract or which otherwise may be available at law or in equity.

2.3.3 Collection Site Designation

- 2.3.3.1 The Contractor shall only perform specimen collections at the designated Collection Occurrence sites (Attachment S). The Contract Manager reserves the right to designate or substitute additional Collection Occurrence sites on an as-needed basis throughout the duration of the Contract. The Contract Manager shall maintain a list of designated Collection Occurrence sites (Attachment S) to ensure there are sufficient sites geographically dispersed throughout the State.
- 2.3.3.2 The ATR shall select a Collection Occurrence site from the designated list for each Collection Occurrence occasion.
- 2.3.3.3 The ATR or Agency authorized designee shall be present onsite for the entire duration of scheduled Collection Occurrences.

2.3.4 Notice to Contractor of Required Specimen Collections

- 2.3.4.1 **Regular Collections** - The ATR shall provide a written request (email preferred) to the Contractor with an approximate number of donors scheduled for Collection Occurrences, indicating a specific Collection Occurrence site and scheduled times, at least three Business Days prior to each Collection Occurrence. At the request of the ATR, the Contractor shall schedule Collection Occurrences up to six months in advance. The Contractor shall perform all requested Collection Occurrences within twenty calendar days of the request, unless the ATR authorizes otherwise. The Contractor shall keep on hand at all times a sufficient inventory of Collection Occurrence Kits and not less than twice the number of scheduled Collection Occurrences for any given Collection Occurrence.

- 2.3.4.2 **Additional Regular Collections (Unscheduled)** – The additional regular Collection (unscheduled) requirement **applies to requests from the Department of Public Safety and Correctional Services (DPSCS) only as follows:**

During any regular Collection Occurrence, the DPSCS ATR reserves the right to request that the Collector remain at the Collection Occurrence site to perform additional unscheduled Collection Occurrences. The Collector will not be required to remain at the Collection Occurrence site for more than 30 minutes beyond the pre-scheduled time frame for the Collection Occurrence to conduct the additional unscheduled Collection Occurrences, unless the ATR provides at least 24 hours advance notice of the additional Collection Occurrences and the extended time frame or the Contractor agrees to do so.

- 2.3.4.3 **Block Time Collections** - The ATR may schedule a Collection Occurrence that requires the Collector to remain at the Collection Occurrence site over a specified time period. Although there may be periods of time in which no Collection Occurrences are performed, the Collector must remain at the Collection Occurrence

site to perform Collection Occurrences for all persons who present themselves for a specimen Collection Occurrence during the scheduled block of time. If the Collector is required to remain at the Collection Occurrence site to perform Collection Occurrences during a single block time Collection Occurrence, the Contractor will be paid a block time fee as specified in its Bid. This block time fee will represent the total compensation to the Contractor for as many or as few collections as the Contractor can complete in either a four (4) hour or eight (8) hour time frame during the Collection Occurrence. Either the four (4) hour or eight (8) hour time frame will be communicated by the ATRs during the initial scheduling request with the Contractor.

If a four (4) hour block is scheduled and the Agency requests the Contractor to stay longer, and the Contractor agrees to do so, the Contractor will be paid for all time in excess of the scheduled block time by the minute, prorated from the block time rate as stated in the Attachment D Specimen Collections Price Bid Form.

For example, divide the 4 hour block time fee (rate) by 240 minutes (4 hours) and multiply the one minute fee rate by the number of additional minutes for which the Contractor services were requested.

Conversely, if the Contractor is dismissed prior to the completion of the time block for which it was scheduled, the Contractor will be paid the full rate for the applicable block of time for which it was scheduled. Any such dismissal must be approved in writing by the ATR. A copy of the documentation shall accompany the invoice.

2.3.4.4 **Regular Collections: Donor No Show Fee** - The Contractor is permitted to charge an amount equivalent to 50% of the firm fixed unit price for a single regular collection specified on the Contractor's Bid Sheet (Attachment D, row A1) for each Collection Occurrence for which a collector travels to a Collection Occurrence site but performs no Collection Occurrences because the scheduled donor(s) fails to appear. The donor no-show fee does not apply if the ATR provides at least 24 hours advance notice of cancellation to the Contractor or the Contractor performs at least one Collection Occurrence during the scheduled Collection Occurrence. The Collector must remain on site for 15 minutes after the first scheduled Collection Occurrence with no Collection Occurrence occurring before a no show fee may apply.

The Collector shall document in writing each scheduled donor(s), date scheduled, and all donor no shows. The Collector shall sign and date the document for review by the ATR. The ATR shall provide signature approval of such documentation prior to the Collector's departure from the site. A copy of the documentation shall accompany the invoice.

2.3.4.5 **Regular Collections: Collector No Show/Late Fee** – Agencies are permitted to deduct an amount equivalent to 50% of the firm fixed unit price for a single regular Collection Occurrence specified on the Contractor’s Bid Sheet (Attachment B, row A1) for each scheduled Collection Occurrence for which a Collector fails to appear or arrives 15 or more minutes late for the first scheduled Collection Occurrence. The Collector no-show fee does not apply if the Contractor provides at least 24 hours advance notice of cancellation via email to each ATR who had Collection Occurrences scheduled during the cancelled Collection Occurrence.

2.3.4.6 **Emergency Collections** - (e.g., reasonable suspicion, and incident triggered testing) The ATR shall provide the Contractor with the number of donors, indicating a specific Collection Occurrence site and scheduled times, as soon as possible after the need for an emergency Collection Occurrence is determined. The ATR shall communicate the required emergency Collection Occurrence time frame at the time of the emergency Collection Occurrence request. The Contractor shall respond within one hour after notification from the ATR. The Collection Occurrence shall be completed within 6 hours of notification, unless circumstances dictate a Collection Occurrence be completed within 4 hours of notification. The designation of the emergency Collection Occurrence time is at the sole discretion of the ATR.

Requests for emergency Collection Occurrences may occur at any time of day or night, on any day of the week, and at any accessible collection site. Consequently, the Contractor must ensure that this service is available throughout the entire State, 24 hours a day, 7 days a week. During the past four years, emergency collections were required an average of 40 times per year.

2.3.4.7 **Emergency Collections: Donor No Show Fee** - The Contractor is permitted to charge an amount equivalent to 50% of the firm fixed unit price for emergency collections specified on the Contractor’s Bid (Attachment B, row C2) if a donor fails to attend a scheduled emergency Collection Occurrence. The Collector must remain at the Collection Occurrence site for 30 minutes after the first scheduled Collection Occurrence with no Collection Occurrence occurring before a no show fee may be applied.

The Collector shall document in writing, including signature, scheduled donor, and date, all emergency donor no shows. The ATR if present onsite shall provide signature approval of such documentation prior to the Collector’s departure from the site. A copy of the documentation shall accompany the invoice.

2.3.4.8 **Emergency Collections: Collector No Show/Late Fee** - Agencies are permitted to deduct an amount equivalent to 50% of the firm fixed unit price for emergency Collection Occurrences specified in the Contractor’s Bid (Attachment B, row C2) for either the four (4) hour Collection Occurrence requirement or the six (6) hour

Collection Occurrence requirement for each scheduled Collection Occurrence for which a Collector fails to appear or arrives fifteen (15) or more minutes late for the first scheduled Collection Occurrence.

- 2.3.4.9 **Collections Scheduling** – The ATR shall ensure that the collections scheduling form clearly identifies a regular individual collection or a block collection to include specifically the number of applicants/employees. The scheduling form shall be in the form and format as approved by the State Contract Manager.

2.3.5 Collection Site Specifications

- 2.3.5.1 The State is responsible for any physical modifications that may be necessary to designate a site as acceptable for Collection Occurrence purposes. The Contractor shall have primary responsibility for assuring Collection Occurrence site requirements are maintained at all times. At a minimum:

2.3.5.1.1 The Collection Occurrence site shall have all necessary materials, equipment, facilities and supervision to provide collection, security, storage and transportation of specimens to the FTDTL, as specified in the Drug Testing Guidelines (Attachment Q).

2.3.5.1.2 All ten items below are to always be available at the collection site. Items 1-8 (below) are provided by the State’s Forensic Technology Drug Testing Laboratory (FTDTL) under a separate State contract. Items 9-10 shall be provided by the Specimen Collection Contractor.

The Contractor is responsible for requesting an adequate quantity of all items 1-8 from the FTDTL in a timely manner to ensure the availability of these items for collections. If the FTDTL does not provide requested items 1-8 in a timely manner the Contractor shall so inform the Contract Manager.

Supplies provided by the State’s FTDTL Contractor:

- 1) Single-use plastic collection containers;
- 2) Single-use plastic specimen bottles;
- 3) Temperature strips capable of temperature readings between 90°-100°F (32°-38°C);
- 4) Paper CCFs, which identify the donor by barcode;
- 5) Tamper-evident seals;
- 6) Leak-resistant plastic bags with two sealable compartments or pouches;
- 7) Absorbent material; and
- 8) Pre-paid shipping containers.

Supplies provided by the Specimen Collection Contractor:

- 9) Bluing agent; and
- 10) Disposable gloves.

- 2.3.5.2 Each Collection Occurrence site shall have restroom facilities that are private, clean, well-lighted and sufficiently secure to prevent compromise during the collection of specimens in accordance with the Drug Testing Guidelines (Attachment Q). The water supply inside the restroom must be turned off or taped off; sensors shall be secured in automated restrooms during the Collection Occurrence. The Collection Occurrence site must also have a source of water external to the restroom where the collection occurs for hand-washing and a suitable, clean surface for the Collector's work area. If an external water source is not available, waterless cleanser or moist towelettes are acceptable alternatives.
- 2.3.5.3 When the State cannot dedicate a site solely for the purpose of Collection Occurrence, the location used for Collection Occurrence will be secure during Collection Occurrence operations. No unauthorized personnel shall be permitted in any part of the Collection Occurrence site where urine specimens are collected or stored.
- 2.3.5.4 For any issues arising during the collection, the Collector shall notify the ATR or authorized Agency designee, who shall be onsite for collections as described in § 2.3.3.3, of the issue. If the ATR or Agency authorized designee who scheduled the collection is not available, the Contractor shall contact the ATR's back-up and/or the Contract Manager. The Contractor shall advise the Contract Manager of any site deficiencies immediately but no later than the next business day after discovery.

2.3.6 Collection Requirements

- 2.3.6.1 To ensure that required chain of custody and Collection Occurrence control are maintained, the Contractor shall strictly follow the Collection Occurrence procedures for single specimens, as specified in the Drug Testing Guidelines (Attachment Q) and COMAR 17.04.09 (Attachment R). The Contractor shall comply with any revisions or clarifications to the Drug Testing Guidelines (Attachment Q) and COMAR to assure continued conformance with the requirements.
- 2.3.6.2 When the donor arrives at the Collection Occurrence site, the Contractor shall require the donor to provide acceptable photo identification as specified in the Drug Testing Guidelines (Attachment Q). Acceptable photo identification is described as an original Driver's License, State or Federal issued ID or Military ID.

- 2.3.6.3 The donor may provide a Collection Occurrence specimen in a stall or otherwise partitioned area that allows for privacy. The Collector shall note any unusual behavior by the donor on the CCF and shall immediately notify the ATR.
- 2.3.6.4 The Collector shall assure that the CCFs, which are supplied by the FTDTL Contractor, are legible and completed accurately and in accordance with the Drug Testing Guidelines (Attachment Q).
- 2.3.6.5 The Collection Occurrence shall not be split into two samples. If the donor cannot provide a specimen or there is not sufficient urine in the container, the Contractor shall apprise the ATR and follow the procedure for “Insufficient Specimen” as specified in the Drug Testing Guidelines (Attachment Q). The ATR is responsible to direct the donor to remain at the Collection Occurrence site for the required time period.
- 2.3.6.6 The Contractor should immediately prepare the Collection Occurrence specimen for shipment to the FTDTL. If the specimen cannot be shipped immediately, it shall be appropriately secured during temporary storage. In no instance shall the Collection Occurrence specimen be stored for longer than 24 hours after collection prior to shipment.
- 2.3.6.7 The Contractor shall adhere strictly to the schedule established by the ATR for each Collection Occurrence. If there is a need to modify the Collection Occurrence schedule, the Contractor shall immediately advise the ATR and request a modification. If the ATR doesn’t approve the modification the Contractor shall strictly adhere to the Collection Occurrence schedule established by the ATR. Any modifications to the Collection Occurrence schedule will be at the sole discretion of the ATR. The Contractor must meet the schedule or provisions of Section 2.3.4.5.
- 2.3.6.8 When a direct observed Collection Occurrence is required, the Collector must be of the same gender as the donor. In such instances, the Contractor will be given advance notice of specific gender requirements and must accommodate such requests. Direct observed Collection Occurrences shall only be required with specific authorization from the ATR or the MRO for the conditions specified in the Drug Testing Guidelines.
- 2.3.6.9 The Contractor shall immediately rectify all Collector Errors in accordance with the procedures specified in the Drug Testing Guidelines (Attachment Q) and to the satisfaction of the MRO.

2.3.7 Submission of Specimen Collection Documents

- 2.3.7.1 Within three (3) Business Days of each Collection Occurrence, the Contractor shall submit the MRO's copy of the CCF, and a copy of the Authorization Form for Release of Records and Information (HIPAA Form For Drug Testing Authorization) and Shy Bladder Log (if applicable) to the Contract Manager. The Contractor shall submit these forms in a secured electronic format to be approved by the Contract Manager prior to any submissions.

Additionally the Contractor shall also hand-deliver the original hard copy documents (as noted above) to the Contract Manager; the Contractor shall obtain the Contract Manger's signature upon submission as proof of delivery.

As an alternative to the hand-delivery method described above, the Contractor may elect to utilize a reputable courier service (such as UPS or FedEx) for such deliveries. The Contractor shall ensure hard-copies of all collected specimens are delivered to the Contract Manger at least once weekly, or more frequently if so desired by the Contractor. Follow up hard-copies of the electronically submitted documents shall be received by the Contract Manger no later than ten (10) Business Days of the collection occurrence.

Contractor may not use alternative methods of delivery without the prior written approval of the Contract Manager.

- 2.3.7.2 Any Collection Occurrence documentation received by the State that is not timely, or that is incomplete or contains erroneous information may be subject to verification and/or possible non-payment by the State. Any contested invoices will be paid by the State if and when the Contractor has satisfied the submission requirement as stated within this IFB and provides a just and proper invoice. Satisfaction of the above requirements will be determined in the sole discretion of the Contract Manager.

2.3.8 Reports and Records

- 2.3.8.1 The Contractor shall maintain all records for a minimum of five years unless advised otherwise by the Procurement Officer.
- 2.3.8.2 All records are subject to the Federal Privacy Act, 5 USC 552a, and other applicable Federal and State laws and regulations and shall be maintained and handled with the highest regard for donor privacy. No records or documents shall be released without the prior written approval of the Contract Manager unless such release is specifically provided for herein.

- 2.3.8.3 Current Certificate of Insurance (See Section 3.1.7) due at each Contract anniversary date shall be submitted to the Contract Manager.
- 2.3.8.4 The Contractor shall submit reports that are due 15 calendar days after the end of the applicable month, quarter and contract year. The reports shall be submitted electronically to the Contract Manager in the form and format as approved by the State. The reports shall include at minimum:
- (1) Specimen Identification Number;
 - (2) Agency Number;
 - (3) Location Code;
 - (4) Name of Collector;
 - (5) Date Collected;
 - (6) Date CCF, HIPAA and Shy Bladder (if applicable) was submitted to the Division;
 - (7) Number of Business Days from date of specimen collection to CCF submission to the Division; and
 - (8) Percentage of CCF's submitted to the Division within three Business Days from date of specimen collection.
- 2.3.8.4 The State reserves the right to edit/change any and all reporting formats. The Contractor is not entitled to any additional payment due to any such change.

2.3.9 Contractor Testimony

- 2.3.9.1 As requested in writing by the State, the Contractor shall make Contract personnel or administrative staff available to provide a deposition or testimony and documentation as required to support any administrative and/or court actions. No personnel provided for testimony shall have been convicted of perjury or of any felony crime.
- 2.3.9.2 If any Contract personnel are required to provide a deposition or testimony, the Contractor will be paid for each person pre-authorized by the Contract Manager. The Contractor will be paid the firm fixed hourly rate, or a prorated portion thereof (rounded up in 15-minute increments) as specified on its Bid Sheet, that each authorized person spends preparing for and/or providing the actual deposition or testimony. Each authorized person must document in writing the nature and rationale for any billable preparation time, to the satisfaction of the Contract Manager. The Contractor shall notify the Contract Manager of any summons, subpoena or deposition within 24 hours of receipt.
- 2.3.9.3 The Contractor will also be paid the firm fixed hourly rate, or prorated portion thereof, for all time spent by each pre-authorized person traveling within Maryland to attend a deposition, hearing or court session which is more than 30 miles from the Contract Manager's office in Baltimore. Billing for travel time and mileage is

only allowed for travel outside the above prescribed 30-mile radius.

- 2.3.9.4 For any authorized travel beyond the referenced 30-mile radius, the Contractor will also be reimbursed for mileage expenses at the same rate paid to State employees and from time to time, amended by the State (53.5 cents per mile as of July 1, 2017).

2.3.10 Payment of Postage and Shipping Fees

The Contractor shall pay all postage and shipping fees related to information submitted to the State, including forms and reports. **This excludes postage or shipping fees related to the transportation of specimens, which shall be paid by the State's FTDTL Contractor.**

2.3.11 State Personnel

The Contract Manager or authorized designee shall provide Contractor with the names of the ATRs, the MRO and other appropriate State officials at the time of Contract award and periodically thereafter.

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SECTION 3 – CONTRACTOR REQUIREMENTS: ADDITIONAL REQUIREMENTS

3.1 Insurance Requirements

- 3.1.1 The Contractor shall maintain Commercial General Liability Insurance to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, with a limit of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- 3.1.2 The Contractor shall maintain Errors and Omissions (Professional Liability) insurance with a minimum limit of \$3,000,000 per claim and annual aggregate
- 3.1.3 The Contractor shall maintain Automobile and/or Commercial Truck Insurance (including owned, leased, hired, and non-owned vehicles) as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State. Minimum limit of \$ 1,000,000 (combined single limit)
- 3.1.4 The Contractor shall maintain Crime Insurance to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and a single loss retention not to exceed \$10,000. To provide coverage for the State the crime policy must be endorsed to cover “Third Party Fidelity.” Third party fidelity covers the Contractor’s employees when engaged in work for a client.
- 3.1.5 The Contractor shall maintain Excess Liability Insurance that exceeds the above noted limits for Commercial General Liability, Auto Liability and Employers Liability (which is part of the Workers Compensation coverage), with a minimum limit of \$4,000,000.
- 3.1.6 The Contractor shall maintain Cyber Liability Insurance for claims arising as a result of the Contractor’s operations under this Contract, with a minimum limit of \$2,000,000.
- 3.1.7 Within five (5) Business Days of recommendation for Contract award, and before any work begins, the Contractor shall provide the Procurement Officer with current certificates of insurance, and update such certificates periodically, but no less than annually in multi-year contracts, as directed by the Contract Manager. Such copy of the Contractor’s current certificate of insurance shall contain at minimum the following:
- a. Workers’ Compensation – The Contractor shall maintain such insurance as necessary and/or required under Workers’ Compensation Acts, the Longshore and Harbor Workers’ Compensation Act, and the Federal Employers’ Liability Act.
 - b. Commercial General Liability as required in IFB Section 3.1.1.
 - c. Errors and Omissions (Professional Liability) Insurance as required in IFB Section 3.1.2.

- d. Automobile and/or Commercial Truck Insurance as required in IFB Section 3.1.3.
 - e. Crime Insurance as required in IFB Section 3.1.4.
 - f. Excess Liability as required in IFB Section 3.1.5.
 - g. Cyber Liability Insurance as required in Section 3.1.6.
- 3.1.8 The “State of Maryland shall be listed as an additional insured on the policies of all property, casualty, liability, and other types of insurance evidencing this coverage. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Manager, by certified mail, not less than 30 days’ advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Manager receives a notice of non-renewal, the Contractor shall provide the Contract Manager with an insurance policy from another carrier at least 15 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and provide such policies.
- 3.1.9 The Contractor shall require that any subcontractors obtain and maintain similar levels of insurance and shall provide the Contract Manager with the same documentation as is required of the Contractor.

3.2 Security Requirements

3.2.1 Employee Identification

3.2.1.1 Each person who is an employee or agent of the Contractor or subcontractor shall display his or her company ID badge at all times while on State premises. Upon request of authorized State personnel, each such employee or agent shall provide additional photo identification.

3.2.1.2 At all times at any facility, the Contractor’s personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badge issuance, and wearing the badge in a visible location at all times.

3.2.2 Criminal Background Check

The Contractor shall obtain from all Contractor and subcontractor personnel assigned to work on the Contract a signed statement permitting a criminal background check. The Contractor shall secure at its own expense a Maryland State Police and/or FBI background check and provide the Contract Manager with completed checks on the above-listed personnel assigned to work under the Contract prior to assignment. At a minimum, these background checks must include all convictions and probation before judgment (PBJ) dispositions. The Contractor may not assign an individual whose background check reflects any criminal activity to work under this Contract unless prior written approval is obtained from the Contract Manager.

3.2.3 Information Technology

For purposes of this solicitation and the resulting Contract:

- (1) “Sensitive Data” means information that is protected against unwarranted disclosure, to include Personally Identifiable Information (PII), Protected Health Information (PHI) or other private/confidential data, as specifically determined by the State. Sensitive Data includes information about an individual that (1) can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information; (3) falls within the definition of “personal information” under Md. Code Ann., Commercial Law § 14-3501(d); or (4) falls within the definition of “personal information” under Md. Code Ann., St. Govt. § 10-1301(c).
- (2) “Relevant subcontractor” includes any subcontractor that assists the Contractor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subcontractors that provide secondary services that are not pertinent to assisting the Contractor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system.
- (3) The Contractor, including any relevant subcontractor(s), shall implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry standards for information security such as those listed below, and ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of this solicitation and resulting Contract.
- (4) The Contractor, including any and all subcontractor(s), agrees to abide by all applicable federal, State and local laws concerning information security and comply with current State of Maryland Department of Information Technology Security Policy: <http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>. The State IT Security Policy may be revised from time to time. The Contractor and all subcontractors shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online on this website.

3.2.4 Incident Response Requirement

Security Incident or Data Breach Notification

The Contractor shall inform the State of any security incident or data breach.

- (1) Incident Response: The Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Discussing security incidents with the State should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the Contract.
- (2) Security Incident Reporting Requirements: The Contractor shall immediately report a security incident to the Contract Manager.
- (3) Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed data breach that affects the security of any State content that is subject to applicable data breach notification law, the Contractor shall (1) promptly notify the Contract Manager within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

Data Breach Responsibilities

This section only applies when a data breach occurs with respect to Sensitive Data within the possession or control of the Contractor.

- (1) The Contractor, shall immediately notify the Contract Manager by telephone in accordance with the agreed upon security plan or security procedures if it confirms that there is, or it reasonably believes there has been a security incident.
- (2) The Contractor, shall promptly notify the Contract Manager within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been, a data breach. The Contractor shall (1) cooperate with the State to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- (3) If a data breach results from Contractor's breach of its Contract obligation to encrypt Sensitive Data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by State law; (3) a credit monitoring service required by State or federal law; (4) a website or a toll-free number and call center for affected individuals required by State; and (5) complete all corrective actions as reasonably determined by the Department.

3.3 Problem Escalation Procedure

3.3.1 The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.

The Contractor shall provide contact information to the Contract Manager, as well as to other State personnel as directed should the Contract Manager not be available.

3.3.2 The Contractor must provide the PEP no later than ten (10) Business Days after Contract Commencement. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:

- a. The process for establishing the existence of a problem;
- b. Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
- c. For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
- d. Expedited escalation procedures and any circumstances that would trigger expedited them;
- e. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
- f. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
- g. A process for updating and notifying the Contract Manager of any changes to the PEP.

Nothing in this section shall be construed to limit any rights of the Contract Manager or the State which may be allowed by the Contract or applicable law.

3.4 Invoicing

3.4.1 General

3.4.1.1 The authorized representative of the Contractor will submit for pre-approval to the Contract Manager each invoice prior to the submission of any invoice to the Agency (an "Invoice Proof"). Invoices submitted without the required information will not be approved until the Contractor provides the required information. The Contractor will certify that each invoice is just and proper. A just and proper invoice includes those items listed in IFB Section 3.4.1.3, items 1 – 17 below.

3.4.1.2 If the Contract Manager or authorized designee requests edits, Contractor shall provide a revised draft invoice within one business day to the requester with copy to the Contract Manager. After written approval of the Invoice Proof by the Contract Manager, Contractor may submit the Invoice Proof in the form approved by the Contract Manager to the using Agency. If invoices are not submitted correctly, no payment will be made.

3.4.1.3 All invoices for services shall be signed by the Contractor and submitted to the Contract Manager. All invoices shall include the following information:

- (1) Contractor name and address;
- (2) Remittance address;
- (3) Federal taxpayer identification number (or if sole proprietorship, the Contractor's social security number);
- (4) Invoice period (i.e. time period during which services covered by invoice were performed);
- (5) Invoice date;
- (6) Invoice number;
- (7) State assigned Contract number;
- (8) State assigned (Blanket) Purchase Order number(s);
- (9) Goods or services provided;
- (10) Amount due;
- (11) Date, collection site, specimen ID number and unit price of each collection;
- (12) Agency name and appropriation code;
- (13) Name and unique identifier of each donor;
- (14) Clear identification of all emergency collections;
- (15) Total number of and total amount charged for all collections performed;
- (16) Unit price, quantity and total price for other services (e.g. testimony, travel, etc.); and
- (17) Authorized representative signature.

Invoices submitted without the required information cannot be processed for payment until the Contractor provides the required information.

3.4.1.4 The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or otherwise materially breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract. Also see the “Living Wage” provision of the Contract, if applicable, which allows for withholding of payment under certain circumstances. Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.

3.4.2 Invoice Submission Schedule

The Contractor shall submit invoices as follows and in accordance with the following schedule:

Contractor shall bill the Agency requesting the Collection Occurrences for all services associated with such Collection Occurrences for the preceding calendar month . Except for billing for the last month of the Contract as described in § 3.4.4, Contractor shall send monthly invoice proofs for all Agencies, including any “no show” donor documentation, to the Contract Manager by the 8th of each month.

Upon approval of the Invoice Proof, the Contractor shall invoice each using Agency by the 15th of the month for the previous month during which collections were performed.

3.4.3 The Contractor shall bill the State using the appropriate regional pricing, as submitted on the Contractor’s Bid Sheet (Excel Attachment B – Price Bid Form). The regions are listed in Section 2.1.3.1 of this solicitation.

3.4.4 Contractor shall provide all invoices and supporting documentation to the Contract Manager within 45 calendar days of the termination of the Contract. Any invoice received more than 45 calendar days after the end of the Contract will not be paid.

3.5 SOC 2 Type 2 Audit Report

A SOC 2 Type 2 Report is not a Contractor requirement for this Contract.

3.6 MBE Reports

This solicitation does not include an MBE Goal.

3.7 VSBE Reports

This solicitation does not include a VSBE Goal.

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SECTION 4 – PROCUREMENT INSTRUCTIONS

4.1 Pre-Bid Conference

A Pre-Bid Conference (the Conference) will be held at the date, time, and location indicated on the IFB Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors). All prospective Bidders are encouraged to attend in order to facilitate better preparation of their Bids.

The Conference will be summarized. As promptly as is feasible after the Conference, a summary of the Conference and all questions and answers known at that time will be distributed via the same mechanism described for amendments and questions (see IFB Section 4.2 eMM).

In order to assure adequate seating and other accommodations at the Conference, please e-mail or fax the Pre-Bid Conference Response Form (**Attachment A**) to the attention of the Procurement Officer at least five (5) Business Days prior to the Pre-Bid Conference date. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the Procurement Officer at least five (5) Business Days prior to the Pre-Bid Conference date. The Department will make a reasonable effort to provide such special accommodation.

4.2 eMaryland Marketplace

Each Bidder is requested to indicate its eMaryland Marketplace (eMM) vendor number in the Transmittal Letter (cover letter) submitted at the time of its Bid submission to this IFB.

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the DBM website <http://dbm.maryland.gov/proc-contracts/Pages/home.aspx> and possibly other means for transmitting the IFB and associated materials, solicitation and summary of the Pre-Bid Conference, Bidder questions, and Procurement Officer's responses, addenda, and other solicitation-related information will be provided via eMM.

In order to receive a contract award, a vendor must be registered on eMM. Registration is free. Go to <https://emaryland.buyspeed.com/bsol/login.jsp>, click on "Register" to begin the process, and then follow the prompts.

4.3 Questions

Written questions from prospective Bidders will be accepted by the Procurement Officer prior to the Conference. If possible and appropriate, such questions will be answered at the Conference. (No substantive question will be answered prior to the Conference.) Questions to the

Procurement Officer shall be submitted via e-mail to the Procurement Officer's e-mail address indicated on the IFB Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors). Please identify in the subject line the Solicitation Number and Title. Questions, both oral and written, will also be accepted from prospective Bidders attending the Conference. If possible and appropriate, these questions will be answered at the Conference.

Questions will also be accepted subsequent to the Conference and should be submitted to the Procurement Officer via email in a timely manner prior to the Bid due date. Questions are requested to be submitted at least five (5) days prior to the Bid due date. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Bid due date. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors that are known to have received a copy of the IFB in sufficient time for the answer to be taken into consideration in the Bid.

4.4 Procurement Method

This Contract will be awarded in accordance with the Competitive Sealed Bidding method under COMAR 21.05.02.

4.5 Bids Due (Closing) Date and Time

Bids, in the number and form set forth in IFB Section 5.4 "Required Bid Submissions" must be received by the Procurement Officer at the Procurement Officer's address no later than the Bid Due date and time indicated on the IFB Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors) in order to be considered.

Requests for extension of this time or date will not be granted. Bidders mailing Bids should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.02.10, Bids received after the due date and time listed in the IFB Key Information Summary Sheet will not be considered.

Bids may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in the IFB Key Information Summary Sheet for receipt of Bids.

Bids may not be submitted by e-mail or facsimile.

Vendors not responding to this solicitation are requested to submit the "Notice to Vendors" form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements, etc.). This form is located in the IFB immediately following the Title Page (page ii).

4.6 Multiple or Alternate Bids

Multiple and/or alternate Bids will not be accepted

4.7 Receipt, Opening and Recording of Bids

Receipt. Upon receipt, each Bid and any timely modification(s) to a Bid shall be stored in a secure place until the time and date set for bid opening. Before Bid opening, the State may not disclose the identity of any Bidder.

Opening and Recording. Bids and timely modifications to Bids shall be opened publicly, at the time, date and place designated in the IFB. The name of each Bidder, the total Bid price, and such other information as is deemed appropriate shall be read aloud or otherwise made available.

The Bid Opening shall be at the date, time, and location indicated in the IFB Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors)

4.8 Public Information Act Notice

The Bids shall be tabulated or a Bid abstract made. The opened Bids shall be available for public inspection at a reasonable time after Bid opening, but in any case before contract award, except to the extent the Bidder designates trade secrets or other proprietary data to be confidential as set forth in this solicitation. Material so designated as confidential shall accompany the Bid and shall be readily separable from the Bid in order to facilitate public inspection of the non-confidential portion of the Bid, including the Total Bid Price.

For requests for information made under the Public Information Act (PIA), the Procurement Officer shall examine the Bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. Nondisclosure is permissible only if approved by the Office of the Attorney General.

4.9 Intentionally Omitted

4.10 Intentionally Omitted

4.11 Duration of Bid

Bids submitted in response to this IFB are irrevocable for 120 days following the closing date for submission of Bids. This period may be extended at the Procurement Officer's request only with the Bidder's written agreement.

4.12 Revisions to the IFB

If it becomes necessary to revise this IFB before the due date for Bids, the Department shall endeavor to provide addenda to all prospective Bidders that were sent this IFB or which are otherwise known by the Procurement Officer to have obtained this IFB. In addition, addenda to the IFB will be posted on the Department's procurement web page and through eMM. It remains the responsibility of all prospective Bidders to check all applicable websites for any addenda issued prior to the submission of Bids.

Acknowledgment of the receipt of all addenda to this IFB issued before the Bid due date shall be included in the Transmittal Letter accompanying the Bidder's Bid. Failure to acknowledge receipt of an addendum does not relieve the Bidder from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Bid to be rejected as being non-responsive to the requirements of the IFB.

4.13 Cancellations

The State reserves the right to cancel this IFB, or accept or reject any and all Bids, in whole or in part, received in response to this IFB.

4.14 Incurred Expenses

The State will not be responsible for any costs incurred by any Bidder in preparing and submitting a Bid or in performing any other activities related to submitting a Bid in response to this solicitation.

4.15 Protest/Disputes

Any protest or dispute related, respectively, to this solicitation or the Contract shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

4.16 Bidder Responsibilities

The selected Bidder shall be responsible for all goods and services and meet all requirements required by this IFB. All subcontractors shall be identified and a complete description of their role relative to the Bid shall be included in the Bidder's Bid. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) to this IFB (see IFB Section 4.26 "Minority Business Enterprise Goals" and IFB Section 4.27 "Veteran-Owned Small Business Enterprise Goal").

If a Bidder is the subsidiary of another entity, all information submitted by the Bidder, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Bidder, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Bidder shall submit with its Bid an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.

4.17 Mandatory Contractual Terms

By submitting a Bid in response to this IFB, a Bidder, if selected for award, shall be deemed to have accepted the terms and conditions of this IFB and the Contract, attached herein as **Attachment M**. Any exceptions to this IFB or the Contract must be raised prior to Bid submission. **Changes to the solicitation, including the Bid Form or Contract, made by the Bidder may result in Bid rejection.**

4.18 Bid Affidavit

A Bid submitted by a Bidder must be accompanied by a completed Bid Affidavit. A copy of this Affidavit is included as **Attachment C** of this IFB.

4.19 Contract Affidavit

All Bidders are advised that if a Contract is awarded as a result of this solicitation, the successful Bidder will be required to complete a Contract Affidavit, a copy of which is included as **Attachment N** of this IFB. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. The Contractor must also submit a Contract Affidavit with any Contract renewal, including the exercise of any options or modifications that may extend the Contract term. For purposes of completing Section "B" of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and

Taxation), a business entity that is organized outside of the State of Maryland is considered to be a “foreign” business.

4.20 Compliance with Laws/Arrearages

By submitting a Bid in response to this IFB, the Bidder, if selected for award, agrees that it will comply with all federal, State, and local laws applicable to its activities and obligations under the Contract.

By submitting a response to this solicitation, each Bidder represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and shall not become so in arrears during the term of the Contract if selected for Contract award.

4.21 Verification of Registration and Tax Payment

Before a business entity can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. The SDAT website is <http://sdat.dat.maryland.gov/ucc-charter/>. For registration information, visit <https://www.egov.maryland.gov/businessexpress>.

It is strongly recommended that any potential Bidder complete registration prior to the due date for receipt of Bids. A Bidder’s failure to complete registration with SDAT may disqualify an otherwise successful Bidder from final consideration and recommendation for Contract award.

4.22 False Statements

Bidders are advised that Md. Code Ann., State Finance and Procurement Article, § 11-205.1 provides as follows:

- (a) In connection with a procurement contract a person may not willfully:
 - (1) falsify, conceal, or suppress a material fact by any scheme or device;
 - (2) make a false or fraudulent statement or representation of a material fact; or
 - (3) use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

- (b) A person may not aid or conspire with another person to commit an act under subsection (a) of this section.

- (c) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding 5 years or both.

4.23 Payments by Electronic Funds Transfer

By submitting a response to this solicitation, the Bidder agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The selected Bidder shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at:

http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.pdf.

4.24 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs (GOMA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract "Prompt Payment" clause (see **Attachment M**). Additional information is available on GOMA's website at:

<http://goma.maryland.gov/Documents/Legislation/PromptPaymentFAQs.pdf>

4.25 Electronic Procurements Authorized

- 4.25.1 Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 4.25.2 Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Bidder to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract.

4.25.3 “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bsol/>), and electronic data interchange.

4.25.4 In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., IFB § 4.23 “Payments by Electronic Funds Transfer”) and subject to the exclusions noted in section 4.25.5 of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:

4.25.4.1 The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:

- (a) The solicitation (e.g., the IFB);
- (b) Any amendments;
- (c) Pre-Bid conference documents;
- (d) Questions and responses;
- (e) Communications regarding the solicitation or Bid to any Bidder or potential Bidder;
- (f) Notices of award selection or non-selection; and
- (g) The Procurement Officer’s decision on any Bid protest or Contract claim.

4.25.4.2 A Bidder or potential Bidder may use e-mail to:

- (a) Ask questions regarding the solicitation;
- (b) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer’s request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer; and
- (c) Submit a “No Bid Response” to the solicitation.

4.25.4.3 The Procurement Officer, the Contract Manager, and the Contractor may conduct day-to-day Contract administration, except as outlined in this subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Manager.

4.25.5 The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:

- (a) Submission of initial Bids;
- (b) Filing of Bid Protests;
- (c) Filing of Contract Claims;
- (d) Submission of documents determined by the Department to require original signatures (e.g., Contract execution, Contract modifications, etc.); or

(e) Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Bidder be provided in writing or hard copy.

4.25.6 Any facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the solicitation, Contract, or direction from the Procurement Officer or Contract Manager.

4.26 Minority Business Enterprise Goals

There is no MBE subcontractor participation goal for this procurement.

4.27 Veteran-Owned Small Business Enterprise Goal

There is no Veteran-Owned Small Business Enterprise (VSBE) participation goal for this procurement.

4.28 Living Wage Requirements

4.28.1 Maryland law requires that Contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code, State Finance and Procurement, § 18-101 *et al.* The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation requires that a Contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. *See* COMAR 21.11.10.05.

4.28.2 If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. See the “Living Wage” clause in the Contract (**Attachment M**).

4.28.3 Additional information regarding the State’s living wage requirement is contained in **Attachment F**. Bidders must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Bids. If a Bidder fails to complete and submit the required documentation, the State may determine the Bidder to be not responsible under State law.

4.28.4 Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a

Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located.

4.28.5 The Contract resulting from this solicitation will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Bidder must identify in its Bid the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.

- (1) If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
- (2) If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
- (3) If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, this Contract will be determined to be a Tier 1 Contract.

4.28.6 Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website:
<http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.

NOTE: Whereas the Living Wage may change annually, the Contract price may not be changed because of a Living Wage change.

4.29 Federal Funding Acknowledgement

This Contract does not contain federal funds.

4.30 Conflict of Interest Affidavit and Disclosure

A Conflict of Interest Affidavit is not required pursuant to COMAR 21.05.08.08(F) for this procurement. A Bidder is required to disclose to the Procurement Officer any actual or potential conflict of interest as it arises, before or after award, in accordance with COMAR 21.05.08.08.

4.31 Non-Disclosure Agreement

A Non-Disclosure Agreement is not required for this procurement.

4.32 HIPAA - Business Associate Agreement

Based on the determination by the Department that the functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the recommended awardee shall execute a Business Associate Agreement as required by HIPAA regulations at 45 C.F.R. §164.500 *et seq.* and set forth in **Attachment J**. The Business Associate Agreement shall be provided within five (5) Business Days of notification of proposed Contract award. However, to expedite processing, it is suggested that the Business Associate Agreement be completed and submitted with the Bid. Should the Business Associate Agreement not be submitted upon expiration of the five (5) Business Day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the responsible Bidder who submits the responsive Bid that has the next lowest Total 5-Year Bid Price to the State.

4.33 Nonvisual Access

This solicitation does not contain Information Technology (IT) provisions requiring Nonvisual Access.

4.34 Mercury and Products That Contain Mercury

This solicitation does not include the procurement of products known to likely include mercury as a component.

4.35 Location of the Performance of Services Disclosure

This solicitation does not require a Location of the Performance of Services Disclosure.

4.36 Department of Human Resources (DHR) Hiring Agreement

This solicitation does not require a DHR Hiring Agreement.

4.37 Small Business Reserve (SBR) Procurement

This solicitation is not designated as a Small Business Reserve (SBR) Procurement.

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SECTION 5 – BID FORMAT

5.1 One Part Submission

Bidders shall submit with their Bid all Minimum Qualification documentation required (see IFB Sections 1.1 and 1.2), and all Required Bid Submissions (see IFB Section 5.4) in a single sealed package/envelope.

5.2 Labeling

Each Bidder is required to label the sealed Bid. The Bid shall bear the IFB title and number, name and address of the Bidder, and closing date and time for receipt of the Bids.

5.3 Bid Price Form

The Bid shall contain all price information in the format specified on the Bid Form (**Attachment B**). Complete the Bid Form only as provided in the Bid Pricing Instructions. Do not amend, alter, or leave blank any items on the Bid Form or include additional clarifying or contingent language on or attached to the Bid Form. If multiple years are included, Bidders must submit Bids for each year. Failure to adhere to any of these instructions may result in the Bid being determined to be non-responsive and rejected by the Department.

5.4 Required Bid Submission

Bidders shall include the following with their Bid:

5.4.1 **Transmittal Letter.** A Transmittal Letter shall accompany the Bid. The purpose of this letter is to transmit the Bid and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to commit the Bidder to the services and requirements as stated in this IFB. The Transmittal Letter should include the following:

- (1) Name and address of the Bidder;
- (2) Name, title, e-mail address, and telephone number of primary contact for the Bidder;
- (3) Solicitation Title and Solicitation Number that the Bid is in response to;
- (4) Signature, typed name, and title of an individual authorized to commit the Bidder to its Bid;
- (5) Federal Employer Identification Number (FEIN) of the Bidder, or if a single individual, that individual's Social Security Number (SSN);
- (6) Bidder's eMM number;

- (7) Bidder's MBE certification number (if applicable);
- (8) Acceptance of all State IFB and Contract terms and conditions (see IFB Section 4.17); and
- (9) Acknowledgement of all addenda to this IFB.

Any information which is claimed to be confidential is to be noted by reference and included after the Transmittal Letter. An explanation for each claim of confidentiality shall be included (see IFB Section 4.8, "Confidentiality of Bids").

In addition, the Transmittal Letter shall indicate whether the Bidder is the subsidiary of another entity, and if so, whether all information submitted by the Bidder pertains exclusively to the Bidder. If not, the subsidiary Bidder shall include a guarantee of performance from its parent organization as part of its Executive Summary (see IFB section 4.16 for more information).

5.4.2 **Minimum Qualifications Documentation.** The bidder shall submit Minimum Qualifications documentation as set forth in IFB Section 1, "Minimum Qualifications."

5.4.3 **Completed Required Attachments.** Submit three (3) copies of each with original signatures:

- a. Completed Bid Form (**Attachment B**).
- b. Completed Bid Affidavit (**Attachment C**).
- c. Completed Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**).

5.4.4 **Additional Document *If Required.** Submit three (3) copies of each with original signatures, if required. *See appropriate IFB section to determine whether the document is required for this procurement.

- a. A Signed Statement from the Bidder's Parent Organization Guaranteeing Performance of the Bidder. *see IFB section 4.16
- b. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) *see IFB section 4.26
- c. Completed Federal Funds Attachment (**Attachment G**) *see IFB section 4.29
- d. Completed Conflict of Interest Affidavit and Disclosure (**Attachment H**) *see IFB section 4.30
- e. Completed Mercury Affidavit (**Attachment K**) *see IFB section 4.34
- f. Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Prime/Subcontractor Participation Schedule (**Attachment E-1**) *see IFB section 4.27
- g. Completed Location of the Performance of Services Disclosure (**Attachment L**) *see IFB section 4.35

5.4.5 **References.** At least three (3) references are requested from customers who are capable of documenting the Bidder's ability to provide the services specified in this IFB. References used to meet any Bidder Minimum Qualifications (see IFB Section 1) may be used to meet this request. Each reference shall be from a client for whom the Bidder has provided services within the past five (5) years and shall include the following information:

- a. Name of client organization;
- b. Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
- c. Value, type, duration, and description of services provided.

The Department reserves the right to request additional references or utilize references not provided by an Bidder.

5.4.6 **List of Current or Prior State Contracts.** Provide a list of all contracts with any entity of the State of Maryland for which the Bidder is currently performing services or for which services have been completed within the last five (5) years. For each identified contract, the Bidder is to provide:

- a. The State contracting entity;
- b. A brief description of the services/goods provided;
- c. The dollar value of the contract;
- d. The term of the contract;
- e. The State employee contact person (name, title, telephone number, and e-mail address); and
- f. Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the Bidder's level of performance on State contracts will be considered as part of the responsibility determination by the Procurement Officer.

5.4.7 **Financial Capabilities.** The Bidder shall include Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

5.4.8 **Certificate of Insurance.** The Bidder shall provide a copy of the Bidder's current certificate of insurance. The recommended awardee must provide a certificate of insurance with the prescribed limits set forth in IFB section 3.1 "Insurance Requirements," naming the State as an additional insured if required, within five (5) Business Days from notification by the Procurement Officer that the Bidder has been determined to be the apparent awardee.

5.4.9 **Subcontractors.** The Bidder shall provide a complete list of all subcontractors that will work on the Contract if the Bidder receives an award, including those utilized in meeting the MBE and/or VSBE subcontracting goal, if applicable. This list shall include a full description of the duties each subcontractor will perform.

5.4.10 **Legal Action Summary.** This summary shall include:

- a. A statement as to whether there are any outstanding legal actions or potential claims against the Bidder and a brief description of any action;
- b. A brief description of any settled or closed legal actions or claims against the Bidder over the past five (5) years;
- c. A description of any judgments against the Bidder within the past five (5) years, including the case name, court case docket number, and what the final ruling or determination was from the court; and
- d. In instances where litigation is on-going and the Bidder has been directed not to disclose information by the court, the name of the judge and location of the court.

5.5 Bid Evaluation and Award

5.5.1 **Evaluation Criteria.** The Bids will be evaluated based on the Total Bid Price as per COMAR 21.02.13.

5.5.2 **Financial Criteria.** All qualified Bidders will be ranked from the lowest to the highest price based on their Total Bid Price proposed within the stated guidelines (as submitted in the Bid Form).

5.5.3 **Reciprocal Preference.** Although Maryland law does not generally authorize procuring units to favor resident Bidders in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, COMAR 21.05.01.04 permits procuring units to apply a reciprocal preference in favor of a Maryland resident business under the following conditions:

- (1) The Maryland resident business is a responsible Bidder;
- (2) The most advantageous Bid is from a responsible Bidder whose principal office or principal operations through which it would provide the services required under this IFB is in another state;
- (3) The other state gives a preference to its resident businesses through law, policy, or practice; and
- (4) The Maryland resident preference does not conflict with a federal law or grant affecting the procurement Contract.

The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

5.5.4 Award Determination. The Contract shall be awarded to the responsible Bidder submitting a responsive Bid with the most favorable Total Bid Price (as referenced in COMAR 21.05.02.13) for providing the goods and services as specified in this IFB. The most favorable Total Bid Price will be the lowest price total on **Attachment B** – Bid Form.

5.5.5 Tie Bids. Tie Bids shall be resolved pursuant to COMAR 21.05.02.14.

5.6 Delivery

Bidders may either mail or hand-deliver Bids.

For U.S. Postal Service deliveries, any bid that has been received at the appropriate mail room, or typical place of mail receipt for the respective procuring unit by the time and date listed in the IFB will be deemed to be timely. If a Bidder chooses to use the U.S. Postal Service for delivery, the Department recommends that it use Express Mail, Priority Mail, or Certified Mail for which date and time of receipt can be verified by the Department. It could take several days for an item sent by first class mail to make its way by normal internal mail to the procuring unit and a Bidder using first class mail will not be able to prove a timely delivery at the mailroom.

Hand-delivery includes delivery by commercial carrier acting for the Bidder. Bidders are advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery for all types of deliveries.

5.7 Documents Required upon Notice of Recommendation for Contract Award

Upon receipt of a Notification of Recommendation for Contract Award, the following documents shall be completed and submitted by the recommended awardee within five (5) Business Days, unless noted otherwise. Submit three (3) copies of each of the following documents:

- (1) Signed Contract (**Attachment M**),
- (2) Completed Contract Affidavit (**Attachment N**),
- (3) Completed MBE **Attachments D-2 and D-3A/B**, within ten (10) Business Days, if applicable; ***see IFB Section 4.26**,
- (4) MBE Waiver Justification within ten (10) Business Days (see **MBE Waiver Guidance and forms in Attachments D-1B and D-1C**), if a waiver has been requested (if applicable; ***see IFB Section 4.26**),
- (5) Completed VSBE **Attachment E-2**, if applicable ***see IFB Section 4.27**,
- (6) Signed Non-Disclosure Agreement (**Attachment I**), if applicable; ***see IFB Section 4.31**,

- (7) Signed HIPAA Business Associate Agreement (**Attachment J**), if applicable; *see **IFB Section 4.32**,
- (8) Completed DHR Hiring Agreement, **Attachment O**, if applicable *see **IFB Section 4.36**, and
- (9) Copy of a current Certificate of Insurance with the prescribed limits set forth in IFB Section 3.1 “Insurance Requirements,” listing the State as an additional insured, if applicable; *see **IFB Section 3.1**

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IFB ATTACHMENTS

ATTACHMENT A – Pre-Bid Conference Response Form

It is requested that this form be completed and submitted as described in IFB Section 4.1 by those potential Bidders that plan on attending the Pre-Bid Conference.

ATTACHMENT B – Bid Instructions and Form

The Bid Form must be completed and submitted in the Bid.

ATTACHMENT C – Bid Affidavit

This Attachment must be completed and submitted with the Bid.

ATTACHMENTS D – Minority Business Enterprise Forms

If required (see IFB Section 4.26), these Attachments include the MBE subcontracting goal statement and instructions, and MBE Attachments D-1 through D-5. Attachment D-1 must be properly completed and submitted with the Bidder's Bid or the Bid will be deemed not reasonably non-responsive and rejected. Within ten (10) Business Days of receiving notification of recommendation for Contract award, the Bidder must submit Attachments D-2 and D-3A/B.

ATTACHMENTS E – Veteran-Owned Small Business Enterprise Forms

If required (see IFB Section 4.27), these Attachments include the VSBE Attachments E-1 through E-4. Attachment E-1 must be completed and submitted with the Bid. Attachment M-2 is required to be submitted within ten (10) Business Days of receiving notification of recommendation for award.

ATTACHMENT F – Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement

Attachment F-1 Living Wage Affidavit of Agreement must be completed and submitted with the Bid.

ATTACHMENT G – Federal Funds Attachment

If required (see IFB Section 4.29), these Attachments must be completed and submitted with the Bid as instructed in the Attachments.

ATTACHMENT H – Conflict of Interest Affidavit and Disclosure

If required (see IFB Section 4.30), this Attachment must be completed and submitted with the Bid.

ATTACHMENT I – Non-Disclosure Agreement

If required (see IFB Section 4.31), this Attachment must be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Bid.

ATTACHMENT J – HIPAA Business Associate Agreement

If required (see IFB Section 4.32), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Bid.

ATTACHMENT K – Mercury Affidavit

If required (see IFB Section 4.34), this Attachment must be completed and submitted with the Bid.

ATTACHMENT L – Location of the Performance of Services Disclosure

If required (see IFB Section 4.35), this Attachment must be completed and submitted with the Bid.

ATTACHMENT M – Contract

This is the sample contract used by the Department. It is provided with the IFB for informational purposes and is not required to be submitted at Bid submission time. Upon notification of recommendation for award, a completed contract will be sent to the recommended awardee for signature. The recommended awardee must return to the Procurement Officer three (3) executed copies of the Contract within five (5) Business Days after receipt. Upon Contract award, a fully-executed copy will be sent to the Contractor.

ATTACHMENT N – Contract Affidavit

This Attachment must be completed and submitted by the recommended awardee to the Procurement Officer within five (5) Business Days of receiving notification of recommendation for award.

ATTACHMENT O – Department of Human Resources (DHR) Hiring Agreement

If required (see IFB Section 4.36), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award.

ATTACHMENT P – Specimen Collection Historical Usage

ATTACHMENT Q – SAMHSA'S Urine Specimen Collection Handbook/Drug Testing Guidelines

ATTACHMENT R – COMAR 17.04.09 – Testing For Illegal Drugs

ATTACHMENT S – Collection Occurrence Sites

ATTACHMENT A – PRE-BID CONFERENCE RESPONSE FORM

**Solicitation Number # 050B740009
Specimen Collections**

A Pre-Bid Conference will be held at the date, time, and location indicated in the IFB Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors).

Please return this form at least five (5) Business Days prior to the Pre-Bid Conference date, advising whether or not you plan to attend. The completed form should be returned via e-mail or fax to the Procurement Officer. The Procurement Officer’s contact information is provided in the IFB Key Information Summary Sheet.

Please indicate:

_____ Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

_____ No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see IFB § 4.1 “Pre-Bid Conference”):

Signature	Title
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Name of Firm (please print)

ATTACHMENT B – BID PRICING INSTRUCTIONS & FORM

See separate Excel Bid Pricing Instructions & Form, Attachment B.

ATTACHMENT C – BID AFFIDAVIT

A. AUTHORITY

I hereby affirm that I, _____ (name of affiant) am the _____ (title) and duly authorized representative of _____ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned Bidder hereby certifies and agrees that the following information is correct: In preparing its Bid on this project, the Bidder has considered all Bids and Proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in “discrimination” as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. “Discrimination” means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, sexual identity, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor’s, supplier’s, or commercial customer’s employees or owners. “Discrimination” also includes retaliating against any person or other entity for reporting any incident of “discrimination”. Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the Bid submitted by the Bidder on this project, and terminate any contract awarded based on the Bid. As part of its Bid, the Bidder herewith submits a list of all instances within the past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State’s Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES

The undersigned Bidder hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, § 14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority Bid;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the Bid;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the Bid.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the Bid submitted by the Bidder on this project, and terminate any contract awarded based on the Bid.

B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES

The undersigned Bidder hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, § 14-605, Annotated Code of Maryland, which provides that a person may not:

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Bid/Proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.13; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1)-(5) of this regulation.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, § 6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (1) Been convicted under state or federal statute of:
 - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids or Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
 - (a) §7201, Attempt to Evade or Defeat Tax;
 - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
 - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,
 - (d) §7206, Fraud and False Statements, or
 - (e) §7207, Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286, Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;

(11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;

(12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:

- (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
- (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
 - (ii) Not overturned on judicial review;

(13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:

- (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
- (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
 - (ii) Not overturned on judicial review;

(14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:

- (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
- (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
 - (ii) Not overturned on judicial review; or

(15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT
I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Proposal that is being submitted; or

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Proposal price of the Bidder/Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Bid/Proposal is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, State Department of Assessments and Taxation, and Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:

(a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and

(b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities: _____

L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

M. I FURTHER AFFIRM THAT:

Any claims of environmental attributes made relating to a product or service included in the Proposal are consistent with the Federal Trade Commission’s Guides for the Use of Environmental Marketing Claims as provided in 16 C.F.R. §260, that apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service.

N. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this Bid/Proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (print name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH BID

ATTACHMENTS D – MINORITY BUSINESS ENTERPRISE FORMS

This solicitation does not include a Minority Business Enterprise (MBE) subcontractor participation goal.

ATTACHMENTS E – VETERAN-OWNED SMALL BUSINESS ENTERPRISE

This solicitation does not include a Veteran-Owned Small Business Enterprise goal.

ATTACHMENT F – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

Living Wage Requirements for Service Contracts

- A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
- (1) A Contractor who:
 - (a) Has a State contract for services valued at less than \$100,000, or
 - (b) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
 - (2) A Subcontractor who:
 - (a) Performs work on a State contract for services valued at less than \$100,000,
 - (b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
 - (c) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(b) above, or B(3) or C below.
 - (3) Service contracts for the following:
 - (a) Services with a Public Service Company;
 - (b) Services with a nonprofit organization;
 - (c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
 - (d) Services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable federal program, the Living Wage does not apply to the contract or program.
- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.

- E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.
- H. A Contractor/Subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dlir.state.md.us/labor/prev/livingwage.shtml>.

Maryland Living Wage Requirements Affidavit of Agreement

(submit with Bid)

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract Is Exempt from the Living Wage Law

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland's Living Wage Law for the following reasons (check all that apply):

- Bidder is a nonprofit organization
- Bidder is a public service company
- Bidder employs 10 or fewer employees and the proposed contract value is less than \$500,000
- Bidder employs more than 10 employees and the proposed contract value is less than \$100,000

If the Contract Is a Living Wage Contract

- A. The Undersigned, being an authorized representative of the above-named Contractor, hereby affirms its commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

B. _____(initial here if applicable) The Bidder affirms it has no covered employees for the following reasons: (check all that apply):

- The employee(s) proposed to work on the contract will spend less than one-half of the employee's time during any work week on the contract
- The employee(s) proposed to work on the contract is 17 years of age or younger during the duration of the contract; or
- The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: _____

Signature of Authorized Representative

Date

Title

Witness Name (Typed or Printed)

Witness Signature

Date

SUBMIT THIS AFFIDAVIT WITH BID

ATTACHMENT G- FEDERAL FUNDS ATTACHMENT

This solicitation does not include a Federal Funds Attachment.

ATTACHMENT H – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

This solicitation does not require a Conflict of Interest Affidavit and Disclosure.

ATTACHMENT I – NON-DISCLOSURE AGREEMENT

This solicitation does not require a Non-Disclosure Agreement.

ATTACHMENT J – HIPAA BUSINESS ASSOCIATE AGREEMENT

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made by and between the Department of Budget and Management and _____ (Insert Name of Contractor) (hereinafter known as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties.”

WHEREAS, Covered Entity has a business relationship with Business Associate that is memorialized in a separate agreement (the “Underlying Agreement”) pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 including all pertinent privacy regulations (45 C.F.R. Parts 160 and 164) and security regulations (45 C.F.R. Parts 160, 162, and 164), as amended from time to time, issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (collectively, “HIPAA”); and

WHEREAS, the nature of the contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information (“PHI”) as that term is defined under HIPAA; and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA and the Maryland Confidentiality of Medical Records Act (Md. Ann. Code, Health-General §§ 4-301 *et seq.*) (“MCMRA”); and

WHEREAS, this Agreement supersedes and replaces any and all Business Associate Agreements the Covered Entity and Business Associate may have entered into prior to the date hereof;

NOW THEREFORE, the premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

I. DEFINITIONS.

- A. Catch-all definition. The following terms used in this Agreement, whether capitalized or not, shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual,

Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

B. Specific definitions:

1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean (**Insert Name of Contractor**).
2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this agreement, shall mean (**Department**).
3. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and Part 164.
4. Protected Health Information (“PHI”). Protected Health Information or “PHI” shall generally have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103.

II. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE.

- A. Business Associate may only use or disclose PHI as necessary to perform the services set forth in the Underlying Agreement or as required by law.
- B. Business Associate agrees to make uses, disclosures, and requests for PHI consistent with Covered Entity’s policies and procedures regarding minimum necessary use of PHI.
- C. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity.
- D. Business Associate may, if directed to do so in writing by Covered Entity, create a limited data set, as defined at 45 CFR 164.514(e)(2) , for use in public health, research, or health care operations. Any such limited data sets shall omit any of the identifying information listed in 45 CFR § 164.514(e)(2). Business Associate will enter into a valid, HIPAA-compliant Data Use Agreement, as described in 45 CFR § 164.514(e)(4), with the limited data set recipient. Business Associate will report any material breach or violation of the data use agreement to Covered Entity immediately after it becomes aware of any such material breach or violation.
- E. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration, or legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business

Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- F. The Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual pursuant to §§13405(d)(1) and (2) of the HITECH Act. This prohibition does not apply to the State's payment of Business Associate for its performance pursuant to the Underlying Agreement.
- G. The Business Associate shall comply with the limitations on marketing and fundraising communications provided in §13406 of the HITECH Act in connection with any PHI of Individuals.

III.DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI

- A. Business Associate agrees that it will not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law.
- B. Business Associate agrees to use appropriate administrative, technical and physical safeguards to protect the privacy of PHI.
- C. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement.
- D1. Business Associate agrees to Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware without reasonable delay, and in no case later than fifteen calendar days after the use or disclosure.
- 2. If the use or disclosure amounts to a breach of unsecured PHI, the Business Associate shall ensure its report:
 - a. Is made to Covered Entity without unreasonable delay and in no case later than fifteen (15) calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this Section III.D.1, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 C.F.R. Part E within fifteen (15) calendar days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;
 - b. Includes the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;

- c. Is in substantially the same form as **ATTACHMENT J-1** attached hereto; and
- d. Includes a draft letter for the Covered Entity to utilize to notify the affected Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:
 - i) A brief description of what happened, including the date of the Breach and discovery of the Breach, if known;
 - ii) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
 - iii) Any steps the affected Individuals should take to protect themselves from potential harm resulting from the Breach;
 - iv) A brief description of what the Covered Entity and Business Associate are doing to investigate the Breach, mitigate losses, and protect against any further Breaches; and
 - v) Contact procedures for the affected Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website, or postal address.
- e. To the extent permitted by the Underlying Agreement, Business Associate may use agents and subcontractors. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2) shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information, Business Associate must enter into Business Associate Agreements with subcontractors as required by HIPAA;
- f. Business Associate agrees it will make available PHI in a designated record set to the Covered Entity, or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524, including, if requested, a copy in electronic format;
- g. Business Associate agrees it will make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526;
- h. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528;
- i. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);

- j. Business Associate agrees to make its internal practices, books, and records, including PHI, available to the Covered Entity and/or the Secretary for purposes of determining compliance with the HIPAA Rules.
- k. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

IV. TERM AND TERMINATION

- A. Term. The Term of this Agreement shall be effective as of the effective date of the Contract entered into following the solicitation for (enter solicitation title), Solicitation # (enter solicitation number), and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, in accordance with the termination provisions in this Section IV, or on the date the Covered Entity terminates for cause as authorized in paragraph B of this Section, whichever is sooner. If it is impossible to return or destroy all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, Business Associate's obligations under this contract shall be ongoing with respect to that information, unless and until a separate written agreement regarding that information is entered into with Covered Entity.
- B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:
 1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement; or
 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and Covered Entity determines or reasonably believes that cure is not possible.
- C. Effect of Termination.
 1. Upon termination of this Agreement, for any reason, Business Associate shall return or, if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
 2. Should Business Associate make an intentional or grossly negligent Breach of PHI in violation of this Agreement or HIPAA or an intentional or grossly negligent

disclosure of information protected by the Maryland Confidentiality of Medical Records Act (MCMRA), Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.

D. Survival. The obligations of Business Associate under this Section shall survive the termination of this agreement.

V. CONSIDERATION

Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

VI. REMEDIES IN EVENT OF BREACH

Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section VI shall be in addition to, not in lieu of, any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement or the Underlying Agreement or which may be available to Covered Entity at law or in equity.

VII. MODIFICATION; AMENDMENT

This Agreement may only be modified or amended through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA rules and any other applicable law.

VIII. INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES

Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless

the parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

IX. COMPLIANCE WITH STATE LAW

The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the MCMRA conflict regarding the degree of protection provided for PHI, Business Associate shall comply with the more restrictive protection requirement.

X. MISCELLANEOUS

- A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.
- B. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

(Insert the name and contact information of the HIPAA contact person within the Department or appropriate covered health care entity)

Name: _____

Address: _____

Email: _____

Phone: _____

D. Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: _____

Attention: _____

Phone: _____

E. Survival. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this contract shall survive termination or expiration of this Agreement and continue in full force and effect.

F. Severability. If any term contained in this Agreement is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Agreement, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

G. Terms. All of the terms of this Agreement are contractual and not merely recitals and none may be amended or modified except by a writing executed by all parties hereto.

H. Priority. This Agreement supersedes and renders null and void any and all prior written or oral undertakings or agreements between the parties regarding the subject matter hereof.

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**FORM OF NOTIFICATION TO COVERED ENTITY OF
BREACH OF UNSECURED PHI**

This notification is made pursuant to Section III.D(3) of the Business Associate Agreement between the Department of Budget and Management and

_____ (Business Associate).

Business Associate hereby notifies the Department of Budget and Management that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach:

Date of the breach: _____ Date of discovery of the breach: _____

Does the breach involve 500 or more individuals? Yes/No If yes, do the people live in multiple states? Yes/No

Number of individuals affected by the breach:

Names of individuals affected by the breach: (attach list)

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code):

Description of what Business Associate is doing to investigate the breach, mitigate losses, and protect against any further breaches:

Contact information to ask questions or learn additional information:

Name: _____

Title: _____

Address: _____

Email Address: _____

Phone Number: _____

ATTACHMENT K – MERCURY AFFIDAVIT

This solicitation does not include the procurement of products known to likely include mercury as a component.

**ATTACHMENT L – LOCATION OF THE PERFORMANCE OF SERVICES
DISCLOSURE**

This solicitation does not require a Location of the Performance of Services Disclosure.

ATTACHMENT M – CONTRACT

SPECIMEN COLLECTIONS

THIS CONTRACT (the “Contract”) is made this _____ day of _____, _____ by and between (**Contractor’s name**) and the STATE OF MARYLAND, acting through the Department of Budget and Management.

In consideration of the promises and the covenants herein contained the adequacy and sufficiency of which is duly acknowledged by the parties, the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 “Bid” means the Contractor’s Bid dated (**Bid date**).
- 1.2 “COMAR” means Code of Maryland Regulations.
- 1.3 “Contract” means this agreement between (**Contractor’s name**) and the State of Maryland, acting through the Department of Budget and Management.
- 1.4 “Contract Manager” means the following Department employee identified as the Contract Manager:

Sherreon Washington:
Office of Personnel Services
MD Department of Budget and Management
301 W. Preston Street, Room 705
Baltimore, MD 21201
- 1.5 “Contractor” means (**Contractor’s name**) whose principal business address is (**Contractor’s primary address**) and whose principal office in Maryland is (**Contractor’s local address**).
- 1.6 “Department” means the Department of Budget and Management.
- 1.7 “IFB” means the Invitation for Bids for Specimen Collections Solicitation #050B7400009, and any addenda thereto issued in writing by the State.
- 1.8 “Procurement Officer” means the following Department employee identified as the Procurement Officer:

Mike Yeager
Department of Budget and Management
45 Calvert Street, Rm., No. 144
Annapolis, MD 21401
- 1.9 “State” means the State of Maryland.

2. Scope of Contract

- 2.1 The Contractor shall provide deliverables, programs, goods, and services specific to the Contract for Specimen Collections to collect specimens from job applicants and employees to test for the use of illegal drugs and is awarded in accordance with Exhibits A-C listed in this section and incorporated as part of this Contract. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The IFB

Exhibit B – State Contract Affidavit, executed by the Contractor and dated (date of Attachment C)

Exhibit C – The Bid

- 2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the IFB. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.
- 2.3 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Contract as provided in Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

3. Period of Performance.

- 3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Contract as of the Go-Live date contained in the written Notice to Proceed. From this Go-Live date, the Contract shall be for a period of approximately five years beginning on 1/1/2018 and ending on 12/31/2022.
- 3.2 Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration or termination of the Contract.

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Bid Form.
- 4.2 Unless a payment is unauthorized, deferred, delayed, or setoff under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if: (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and (2) A Contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland. The State is not liable for interest: (1) accruing more than one year after the 31st day after the agency receives the proper invoice; or (2) on any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable. Each invoice for services rendered must include the Contractor's Federal Tax Identification or Social Security Number for a Contractor who is an individual which is **(Contractor's FEIN or SSN)**. Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 are prohibited. Invoices shall be submitted to the Contract Manager. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.
- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.
- 4.5 Contractor's eMaryland Marketplace vendor ID number is **(Contractor's eMM number)**.

5. Rights to Records

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any

products created as a deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

- 5.3 The Contractor shall report to the Contract Manager, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

6. Exclusive Use

- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.
- 6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor relating to the Contract, except that Contractor may provide said information to any of its officers, employees and subcontractors who Contractor requires to have said information for fulfillment of Contractor's obligations hereunder. Each officer, employee and/or subcontractor to whom any of the Department's confidential information is to be disclosed shall be advised by Contractor of and bound by confidentiality and intellectual property terms substantively equivalent to those of this Contract.

7. Patents, Copyrights, and Intellectual Property

- 7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.
- 7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs, and attorneys' fees that a court

finally awards, provided the State: (a) promptly notifies the Contractor in writing of the claim; and (b) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.

- 7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for the State the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

8. Confidential or Proprietary Information and Documentation

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and the implementation of regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.
- 8.2 This Section 8 shall survive expiration or termination of this Contract.

9. Loss of Data

- 9.1 In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Manager. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and/or applications with which the Contractor is working hereunder.

10. Indemnification

- 10.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are

attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.

- 10.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.
- 10.3 The State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.4 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.5 The Contractor shall immediately notify the Procurement Officer of any claim or lawsuit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, lawsuit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.
- 10.6 This Section 10 shall survive termination of this Contract.

11. Non-Hiring of Employees

- 11.1 No official or employee of the State, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

12. Disputes

- 12.1 This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

13. Maryland Law

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland), does not apply to this Contract or any purchase order or Notice to Proceed issued under this Contract, or any software, or any software license required hereunder.
- 13.3 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

14. Nondiscrimination in Employment

- 14.1 The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

15. Contingent Fee Prohibition

- 15.1 The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract.

16. Non-Availability of Funding

- 16.1 If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

17. Termination for Cause

17.1 If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

18. Termination for Convenience

18.1 The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

19. Delays and Extensions of Time

19.1 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays, interruptions, interferences, or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

19.2 Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

20. Suspension of Work

20.1 The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

21. Pre-Existing Regulations

21.1 In accordance with the provisions of Md. Code Ann., State Finance and Procurement Article, § 11-206, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

22. Financial Disclosure

22.1 The Contractor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, § 13-221, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

23. Political Contribution Disclosure

23.1 The Contractor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall, file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: http://www.elections.state.md.us/campaign_finance/index.html.

24. Document Retention and Inspection Clause

24.1 The Contractor and subcontractors shall retain and maintain all records and documents relating to this Contract for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations or federal retention requirements (such as HIPAA), whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, the Contractor shall provide assistance to the State, without additional compensation, to identify, investigate, and reconcile any audit discrepancies and/or variances. This Section 24 shall survive expiration or termination of the Contract.

25. Right to Audit

25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's and/or subcontractor's performance under this Contract. An audit is defined as a

planned and documented independent activity performed by qualified personnel including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the Contract services being performed for the State.

- 25.2 Upon three (3) Business Days' notice, the Contractor and/or any subcontractors shall provide the State reasonable access to their respective records to verify conformance to the terms of the Contract. The Department may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the Department's election. The Department may copy, at its own expense, any record related to the services performed and provided under this Contract.
- 25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s) that provide essential support to the Contract services. The Contractor and/or subcontractor(s) shall ensure the Department has the right to audit such subcontractor(s).
- 25.4 The Contractor and/or subcontractors shall cooperate with Department and Department's designated accountant or auditor and shall provide the necessary assistance for the Department or Department's designated accountant or auditor to conduct the audit.
- 25.5 This Section shall survive expiration or termination of the Contract.

26. Compliance with Laws

The Contractor hereby represents and warrants that:

- 26.1 It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- 26.2 It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- 26.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- 26.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

27. Cost and Price Certification

- 27.1 By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its Proposal.

27.2 The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Proposal, was inaccurate, incomplete, or not current.

28. Subcontracting; Assignment

28.1 The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer; provided, however, that a Contractor may assign monies receivable under a contract after due notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

29. Liability

For breach of this Contract, negligence, misrepresentation, or any other contract or tort claim, the Contractor shall be liable as follows:

29.1 For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;

29.2 Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and

29.3 For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form the Contractor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

29.4 In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors shall be held to be agents of Contractor.

30. Commercial Nondiscrimination

30.1 As a condition of entering into this Contract, the Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, the Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Contractor retaliate

against any person for reporting instances of such discrimination. The Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. The Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

30.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.

30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against the Contractor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, the Contractor agrees to provide within sixty (60) days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

31. Prompt Pay Requirements

31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:

- a. Not process further payments to the contractor until payment to the subcontractor is verified;
- b. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
- c. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
- d. Place a payment for an undisputed amount in an interest-bearing escrow account; or
- e. Take other or further actions as appropriate to resolve the withheld payment.

31.2 An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation:

- a. Retainage which had been withheld and is, by the terms of the Contract between the Contractor and subcontractor, due to be distributed to the subcontractor; and
- b. An amount withheld because of issues arising out of a Contract or occurrence unrelated to the Contract under which the amount is withheld.

31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:

- a. Affect the rights of the contracting parties under any other provision of law;
- b. Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or
- c. Result in liability against or prejudice the rights of the Department.

31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise (MBE) program.

31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:

- a. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.

Verification shall include a review of the:

- i. The Contractor's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
 - ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
- b. If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
 - c. If the Department determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
 - i. Terminate the contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
 - d. Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

32. Living Wage

32.1 If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the agency may withhold payment of any invoice or retainage. The agency may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

33. Use of Estimated Quantities

33.1 Unless specifically indicated otherwise in the State’s solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and the Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

34. Contract Manager and Procurement Officer

34.1 The work to be accomplished under this Contract shall be performed under the direction of the Contract Manager. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

35. Notices

35.1 All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the State: **Mike Yeager**
Procurement Officer
Maryland Department of Budget and Management
45 Calvert Street, Rm: 144
Annapolis, MD 21401

If to the Contractor: _____

36. Parent Company Guarantee

36.1 **(Corporate name of Contractor’s Parent Company)** hereby guarantees absolutely the full, prompt, and complete performance by **(Contractor)** of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations, and liabilities. **(Corporate name of Contractor’s Parent**

Company) may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. **(Corporate name of Contractor's Parent Company)** further agrees that if the State brings any claim, action, lawsuit or proceeding against **(Contractor)**, **(Corporate name of Contractor's Parent Company)** may be named as a party, in its capacity as Absolute Guarantor.

(The following clause is mandatory for federally-funded contracts involving healthcare entities or individuals, the employment of healthcare entities or individuals, or subcontracting with healthcare entities or individuals that may be named on the DHHS List of Excluded Individuals/Entities.)

37. Federal Department of Health and Human Services (DHHS) Exclusion Requirements

37.1 The Contractor agrees that it will comply with federal provisions (pursuant to §§ 1128 and 1156 of the Social Security Act and 42 C.F.R. 1001) that prohibit payments under certain federal health care programs to any individual or entity that is on the List of Excluded Individuals/Entities maintained by DHHS. By executing this contract, the Contractor affirmatively declares that neither it nor any employee is, to the best of its knowledge, subject to exclusion. The Contractor agrees, further, during the term of this contract, to check the List of Excluded Individuals/Entities prior to hiring or assigning individuals to work on this Contract, and to notify the Department immediately of any identification of the Contractor or an individual employee as excluded, and of any DHHS action or proposed action to exclude the Contractor or any Contractor employee.

40. Compliance with Federal HIPAA and State Confidentiality Law

40.1 The Contractor acknowledges its duty to become familiar with and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d et seq., and implementing regulations including 45 C.F.R. Parts 160 and 164. The Contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes:

- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under HIPAA and MCMRA and making the transmission of all electronic information compatible with the HIPAA requirements;
- (b) Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the contract; and
- (c) Otherwise providing good information management practices regarding all health information and medical records.

40.2 Based on the determination by the Department that the functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the Contractor shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.501 and in the form as required by the Department.

40.3 “Protected Health Information” as defined in the HIPAA regulations at 45 C.F.R. 160.103 and 164.501, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and that is related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

41. Limited English Proficiency

41.1 The Contractor shall provide equal access to public services to individuals with limited English proficiency in compliance with Md. Code Ann., State Government Article, §§ 10-1101 et seq., and Policy Guidance issued by the Office of Civil Rights, Department of Health and Human Services.

42. Miscellaneous

42.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.

42.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR

STATE OF MARYLAND
DEPARTMENT OF BUDGET
AND MANAGEMENT

By:

By: **Marc Nicole / Deputy Secretary**

Date

Date

Approved for form and legal sufficiency
this ____ day of _____, 2017.

Assistant Attorney General

APPROVED BY BPW: _____
(Date) (BPW Item #)

ATTACHMENT N – CONTRACT AFFIDAVIT

A. AUTHORITY

I hereby affirm that I, _____ (name of affiant) am the _____ (title) and duly authorized representative of _____ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

**B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE
DEPARTMENT OF ASSESSMENTS AND TAXATION**

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

- (1) Corporation — domestic or foreign;
- (2) Limited Liability Company — domestic or foreign;
- (3) Partnership — domestic or foreign;
- (4) Statutory Trust — domestic or foreign;
- (5) Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID
Number: _____ Address: _____

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID
Number: _____ Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the

Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its Bid/Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

- (i) The dangers of drug and alcohol abuse in the workplace;
- (ii) The business's policy of maintaining a drug and alcohol free workplace;
- (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;

(h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

- (i) Take appropriate personnel action against an employee, up to and including termination; or
- (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 201____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (printed name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

ATTACHMENT O – DHR HIRING AGREEMENT

This solicitation does not require a DHR Hiring Agreement.

ATTACHMENT P – SPECIMEN COLLECTION HISTORICAL USAGE

<i>Agencies</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>
<i>Comptroller of Maryland</i>	<i>17</i>	<i>5</i>	<i>16</i>	<i>5</i>
<i>Department of Agriculture</i>	<i>1</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Department of Assessments & Taxation</i>	<i>0</i>	<i>0</i>	<i>1</i>	<i>0</i>
<i>Department of General Services</i>	<i>39</i>	<i>20</i>	<i>33</i>	<i>32</i>
<i>Department of Human Resources</i>	<i>0</i>	<i>0</i>	<i>1</i>	<i>2</i>
<i>Department of Juvenile Services</i>	<i>604</i>	<i>743</i>	<i>557</i>	<i>733</i>
<i>Department of Labor and Licensing</i>	<i>33</i>	<i>17</i>	<i>17</i>	<i>21</i>
<i>Department of Labor and Licensing - Labor and Industry</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>19</i>
<i>Department of Natural Resources</i>	<i>62</i>	<i>34</i>	<i>56</i>	<i>56</i>
<i>Department of Public Safety and Corrections - Baltimore Region</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>42</i>
<i>Department of Public Safety and Corrections - Centralized Hiring Unit</i>	<i>1078</i>	<i>1112</i>	<i>946</i>	<i>556</i>
<i>Department of Public Safety and Corrections</i>	<i>295</i>	<i>276</i>	<i>221</i>	<i>188</i>
<i>Department of Public Safety and Corrections - CSS</i>	<i>152</i>	<i>144</i>	<i>39</i>	<i>99</i>
<i>Department of Public Safety and Corrections - Division of Correction</i>	<i>0</i>	<i>0</i>	<i>2</i>	<i>2</i>
<i>Department of Public Safety and Corrections - ECI</i>	<i>161</i>	<i>163</i>	<i>24</i>	<i>102</i>
<i>Department of Public Safety and Corrections - IIU</i>	<i>11</i>	<i>7</i>	<i>11</i>	<i>21</i>
<i>Department of Public Safety and Corrections - MCI</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>22</i>
<i>Department of Public Safety and Corrections - Jessup Region</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>45</i>
<i>Department of Public Safety and Corrections - Patuxent Institution</i>	<i>101</i>	<i>92</i>	<i>37</i>	<i>249</i>
<i>Department of Public Safety and Corrections - Pre-Trial</i>	<i>118</i>	<i>59</i>	<i>17</i>	<i>89</i>
<i>Department of Public Safety and Corrections - WCI</i>	<i>92</i>	<i>141</i>	<i>55</i>	<i>104</i>
<i>Department of Public Safety and Corrections - WCU</i>	<i>0</i>	<i>0</i>	<i>106</i>	<i>1</i>
<i>Department of the Environment</i>	<i>2</i>	<i>0</i>	<i>0</i>	<i>0</i>
<i>Department of Veterans Affairs</i>	<i>1</i>	<i>0</i>	<i>16</i>	<i>11</i>
<i>Institute for Emergency Medical Services Systems</i>	<i>5</i>	<i>6</i>	<i>11</i>	<i>6</i>
<i>Judiciary</i>	<i>0</i>	<i>0</i>	<i>1</i>	<i>1</i>

<i>Maryland Department of Health - Allegany Health Department</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>1</i>
<i>Maryland Department of Health - Calvert Health Department</i>	<i>0</i>	<i>1</i>	<i>0</i>	<i>0</i>
<i>Maryland Department of Health - Caroline Health Department</i>	<i>1</i>	<i>1</i>	<i>0</i>	<i>0</i>
<i>Maryland Department of Health - Cecil Health Department</i>	<i>0</i>	<i>2</i>	<i>9</i>	<i>7</i>
<i>Maryland Department of Health - Charles Health Department</i>	<i>1</i>	<i>1</i>	<i>1</i>	<i>0</i>
<i>Maryland Department of Health - Deer's Head Center</i>	<i>23</i>	<i>32</i>	<i>30</i>	<i>27</i>
<i>Maryland Department of Health - Dorchester y Health Department</i>	<i>2</i>	<i>0</i>	<i>0</i>	<i>1</i>
<i>Maryland Department of Health - Eastern Shore Hospital</i>	<i>5</i>	<i>10</i>	<i>10</i>	<i>2</i>
<i>Maryland Department of Health - Garrett Health Department</i>	<i>0</i>	<i>2</i>	<i>0</i>	<i>0</i>
<i>Maryland Department of Health - Harford Health Department</i>	<i>1</i>	<i>4</i>	<i>0</i>	<i>3</i>
<i>Maryland Department of Health - Holly Center</i>	<i>46</i>	<i>34</i>	<i>19</i>	<i>24</i>
<i>Maryland Department of Health - Howard Health Department</i>	<i>5</i>	<i>5</i>	<i>3</i>	<i>1</i>
<i>Maryland Department of Health - Laboratories Administration</i>	<i>0</i>	<i>3</i>	<i>0</i>	<i>0</i>
<i>Maryland Department of Health - Perkins Hospital Center</i>	<i>49</i>	<i>15</i>	<i>0</i>	<i>23</i>
<i>Maryland Department of Health - Potomac Center</i>	<i>48</i>	<i>17</i>	<i>23</i>	<i>20</i>
<i>Maryland Department of Health - RICA</i>	<i>31</i>	<i>18</i>	<i>13</i>	<i>0</i>
<i>Maryland Department of Health - SETT Division</i>	<i>1</i>	<i>13</i>	<i>0</i>	<i>0</i>
<i>Maryland Department of Health - Somerset y Health Department</i>	<i>0</i>	<i>7</i>	<i>4</i>	<i>2</i>
<i>Maryland Department of Health - Spring Grove Hospital</i>	<i>76</i>	<i>130</i>	<i>82</i>	<i>98</i>
<i>Maryland Department of Health - Springfield Hospital Center</i>	<i>71</i>	<i>84</i>	<i>83</i>	<i>104</i>
<i>Maryland Department of Health - St. Mary's Health Department</i>	<i>5</i>	<i>3</i>	<i>0</i>	<i>1</i>
<i>Maryland Department of Health - Thomas B. Finance Center</i>	<i>11</i>	<i>21</i>	<i>20</i>	<i>21</i>
<i>Maryland Department of Health - Washington Health Department</i>	<i>3</i>	<i>0</i>	<i>3</i>	<i>0</i>
<i>Maryland Department of Health - Western Maryland Hospital Center</i>	<i>46</i>	<i>34</i>	<i>45</i>	<i>19</i>

<i>Maryland Department of Health - Wicomico Maryland Hospital Center</i>	<i>0</i>	<i>0</i>	<i>2</i>	<i>0</i>
<i>Maryland Department of Health - Worcester Health Department</i>	<i>13</i>	<i>13</i>	<i>10</i>	<i>4</i>
<i>Maryland Department of Health</i>	<i>11</i>	<i>17</i>	<i>4</i>	<i>0</i>
<i>Maryland School for the Deaf</i>	<i>66</i>	<i>55</i>	<i>33</i>	<i>15</i>
<i>Maryland State Department of Education</i>	<i>117</i>	<i>45</i>	<i>69</i>	<i>92</i>
<i>Maryland State Police</i>	<i>956</i>	<i>1002</i>	<i>799</i>	<i>921</i>
<i>Military Department</i>	<i>9</i>	<i>12</i>	<i>14</i>	<i>29</i>
<i>Public Service Commission</i>	<i>0</i>	<i>2</i>	<i>4</i>	<i>4</i>
<i>St. Mary's College</i>	<i>5</i>	<i>4</i>	<i>7</i>	<i>0</i>
<i>Grand Totals</i>	<i>4374</i>	<i>4406</i>	<i>3454</i>	<i>3825</i>

**ATTACHMENT Q – SAMHSA’S URINE SPECIMEN COLLECTION
HANDBOOK/DRUG TESTING GUIDELINES**

**Department of Health and Human Services
Substance Abuse and Mental Health Services Administration
Center for Substance Abuse Prevention**

Urine Specimen Collection Handbook

for

Federal Agency Workplace Drug Testing Programs

(a) EFFECTIVE OCTOBER 1, 2010

Note: This manual applies to Federal agency drug testing programs that come under Executive Order 12564 dated September 15, 1986, section 503 of Public Law 100-71, 5 U.S.C. section 7301 note dated July 11, 1987, and the Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs (69 FR 19644) dated November 25, 2008 (effective October 1, 2010).

This manual does not apply to specimens submitted for testing under U.S. Department of Transportation (DOT) Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40).

This manual has been amended to comply with the Maryland State Drug Testing Program.

Previous Versions of this Handbook are Obsolete

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Chapter 1. The Collector

A collector is the person who instructs and assists donors at a collection site and receives the specimen provided by the donor.

The following restrictions apply:

- The immediate supervisor of an employee may not serve as the collector when that employee is tested, unless there is no feasible alternative. A supervisor serving as a collector must be a trained collector.
- The hiring official of an applicant may not serve as the collector when the applicant is tested, unless there is no feasible alternative. A hiring official serving as a collector must be a trained collector.
- A co-worker who is in the same testing pool or who works with an employee on a daily basis must not serve as a collector when that employee is tested.
- An applicant or employee must not serve as the collector by collecting his or her own specimen.
- An individual working for an HHS-certified laboratory may not serve as a collector if that individual can link the donor with the specimen drug test result or the report from the test laboratory.
- An individual who has a personal relationship with the employee (e.g., spouse, ex-spouse, relative, close personal friend) must not serve as the collector.

To qualify as a collector for an agency program, an individual must:

- Read and understand the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines)
- Read and understand any guidance provided by the Federal agency which is consistent with the Mandatory Guidelines
- Receive training from a qualified trainer for collectors on the following topics:
 - The steps to correctly perform a collection, including the proper completion and distribution of the CCF
 - Problem collections
 - Fatal and correctable flaws and how to correct problems in collections
 - Collector responsibilities to maintain the security and integrity of specimens, to protect the privacy of donors, and to maintain proper conduct
- Demonstrate proficiency in collections by successfully completing five consecutive error-free mock collections that include: two uneventful scenarios, one insufficient specimen scenario, one where the temperature is out of range, and one in which the donor refuses to sign the CCF and refuses to initial the tamper-evident bottle label/seal
 - The qualified trainer for collectors must monitor and evaluate the individual and must attest that the mock collections are error-free
- Complete refresher training on the items above at least every five years from the date of initial training
- Have documentation that he or she has completed training as a collector in accordance with the above requirements (i.e., before collecting any specimens for an agency)
- Maintain training documentation and provide it to an Agency upon request

The collector should have identification with his or her name and his or her employer's name, address, and telephone number. The collector is required to provide his or her identification (employee badge or employee list) if requested by the donor. There is no requirement for the collector to have a photo ID or to provide his or her driver's license with an address.

To qualify as an observer for a direct observed collection for an agency program, an individual must:

- Be knowledgeable of the direct observed collection procedure as described in the Mandatory Guidelines
- Be knowledgeable of any guidance provided by the State or by HHS relating to the direct observed collection procedure described in the Mandatory Guidelines
- Receive training on the following subjects: :
 - The steps necessary to perform a direct observed collection correctly
 - Maintain the integrity and security of the specimen throughout the collection process by maintaining visual contact with the collection container
 - Ensure the privacy of the donor
 - Ensure that the observation is done in a professional manner, to minimize discomfort of the donor
 - Avoid conduct that can be interpreted as offensive or inappropriate
- Be the same gender as the donor. **There are no exceptions to this requirement.**

An observer is not required to be a trained collector.

To qualify as a trainer for collectors for an agency program, an individual must:

- Be qualified as a trained collector and have regularly conducted drug test collections for at least one year, OR have successfully completed a "train the trainer" course given by an organization (e.g., manufacturer, private entity, contractor, or Agency)
- Undergo refresher training in accordance with collector requirements (see above) at least every five years from the date of the individual's initial training
- Maintain documentation of his or her training and provide it to an Agency upon request.

Before an individual is permitted to collect a specimen for an Agency, the agency must:

- Ensure that the individual meets the collector requirements described in the Mandatory Guidelines
- Ensure that the individual or a third party (e.g., third party administrator, collector training organization, agency that employs its own collectors) has a copy of the individual's collector training documentation
- Provide the individual with the name and telephone number of the agency's designated representative to contact in the event that any problems or issues arise during a collection

Chapter 2. Collector/Collection Site Records

The collector should maintain his or her original collector training records (i.e., for initial and refresher training) and should provide copies to his or her employer and, as requested, to the agency. Collection site records must be stored for a minimum of two years. This includes the collector copy (Copy 3) of the CCF for each specimen. Collection records must be stored and disposed of in a manner that ensures donor confidentiality is maintained.

Chapter 3. The Collection Site

A collection site is a permanent or temporary facility where donors present themselves for the purpose of providing a specimen for a drug test. When there is an immediate need to collect a specimen (e.g., a post-accident situation) and there is no agency-designated site available, a collection may be conducted in a public restroom. The site must have all necessary personnel, supplies, equipment, facilities, and supervision to provide for specimen collection and security, and for temporary storage until the specimen is transferred to an HHS-certified laboratory and must have arrangements for the transfer of the specimens to a certified laboratory.

A facility used as a collection site must have:

1. Provisions for donor privacy while he/she provides the urine specimen. The following facilities provide adequate privacy for urine collections:
 - An enclosed stall in a multi-stall restroom
 - A single person restroom
 - A partitioned area that allows for individual privacy
 - A mobile restroom (e.g., a vehicle with an enclosed toilet stall).
2. A means for washing hands:
 - If practical, the water source should be external to the restroom where collection occurs. If a water source is in the enclosure where the collection occurs, the collector must secure it prior to the collection or conduct a monitored collection (see Chapter 6, Sections C and E).
 - If a water source is not available, another means (e.g., waterless cleanser, moist towelettes) outside the restroom is an acceptable alternative.
3. A suitable clean surface, inaccessible to the donor, for the collector to use as a work area:
 - If practical, the collector work area should be external to the restroom where collection occurs.
 - The collector work area may be inside the restroom only if the donor can have privacy while providing the urine specimen.
4. A secure temporary storage area for maintaining specimens until they are transferred to an HHS-certified laboratory. **Note: Specimens should NOT be exposed to high temperatures for an extended time. These conditions may affect the test results of a urine specimen.**
5. Procedures or restrictions to prevent:
 - Unauthorized access to the site during the collection,
 - Unauthorized access to the collection materials/supplies,
 - Unauthorized access to collection site records, and
 - Donor access to items that could be used to adulterate, substitute, or dilute the specimen (e.g., soap, disinfectants, cleaning agents, water).

Chapter 4. The Federal Drug Testing Custody and Control Form

Employers are prohibited from using the Federal CCF for:

- Private-sector employee drug testing programs, other than testing conducted under the Department of Transportation (DOT) regulations

- State workplace drug testing programs
- Department of Justice drug testing programs

All urine specimens must be collected using chain of custody procedures. Chain of custody is the term used to describe the procedures to account for the integrity of each specimen and aliquot (i.e., portion of a specimen used for testing) by tracking handling and storage from the point of specimen collection to final disposition of the specimen and its aliquots. For specimens collected under the Mandatory Guidelines, the collector begins the chain of custody documentation at the collection site using a CCF.

A. CCF Description

CCF's are supplied by the FTDTL and are five-part forms:

- Copy 1 - Test Facility Copy – sent to the laboratory with the specimen bottle
- Copy 2 - MRO Copy – sent to the MRO
- Copy 3 - Collector Copy – retained by the collector
- Copy 4 - Employer Copy – sent to the agency
- Copy 5 - Donor Copy – given to the donor when the collection process is complete

At the top of the CCF, the test facility must be identified by one of the following:

- A specific laboratory name and address
- A list of addresses with check boxes to allow the collector to check the box for the laboratory to which the specimen will be delivered
- A corporate name and telephone number (the laboratory that receives the specimen for testing will annotate its address)

The bottom of Copy 1 is reserved for the tamper-evident specimen bottle label/seal:

- The label/seal must have:
 - The same preprinted specimen identification number that is printed at the top of the CCF,
 - A place for the collector to annotate the date of the collection, and
 - A place for the donor to initial the label after it is placed on the specimen bottle.

B. Instructions for Use

Step 1. To be completed by the collector or agency representative prior to the donor providing a specimen:

- The employer and MRO information may be preprinted or handwritten,
- The collection site and collector information may be preprinted or handwritten,
- The collector enters the donor's identification (e.g., social security number or employee I.D. number) after verifying the donor's identity,
- The testing authority box is marked to indicate under which agency the specimen is being collected,
- The appropriate box is marked to indicate the reason for the test, and
- The appropriate box is marked for the drug tests to be performed.

Step 2. To be completed by the collector after receiving the specimen from the donor and measuring the temperature of the specimen within 4 minutes. This step requires the collector to mark the appropriate boxes to indicate that:

- The temperature of the specimen was or was not within the required temperature range,

- The collection was a single specimen collection,
- No specimen was collected and why (if applicable), and
- A direct observed collection was performed and why (if applicable).

Step 3. To be performed by the collector. This step instructs the collector to:

- Place the label/seal on the specimen bottle,
- Date the label/seal,
- Have the donor initial the label/seal on the bottle (i.e., after the label/seal has been placed on the bottle), and
- Have the donor complete Step 5 on Copy 2 (the MRO copy). The collector instructs the donor to:
 - Read the certification statement.
 - Print the following:
 - His or her name,
 - Date of collection,
 - Daytime and evening telephone numbers, and
 - Date of birth.
 - Sign the certification statement. If the donor refuses to sign the certification statement, the collector enters a remark in Step 2 on Copy 1.

The collector does not make any entries on Copy 2. The MRO will complete Copy 2 entries.

Step 4. To be initiated by the collector and completed at the test facility. The collector is required to:

- Sign the collector certification statement in Step 4 on Copy 1 to certify that the specimen was collected, labeled, sealed, and released for shipment to the laboratory in accordance with Federal requirements.
- Print his or her name.
- Record the following:
 - Date of collection
 - Time of collection
 - The specific name of the delivery service to which the specimen is released for shipment to the laboratory.
 - There is no requirement for couriers, express carriers, or postal service personnel to document chain of custody for specimens during transit because they do not have access to the specimen bottle or the CCF.

The collector does not make entries below his or her printed name in Step 4. Copy 1 entries in Step 4 are made at the HHS-certified laboratory in the designated areas.

Chapter 5. Verification of Donor Identity

The donor must provide appropriate identification to the collector upon arrival at the collection site.

Acceptable forms of identification are:

- A photo identification (e.g., driver's license, employee badge issued by the employer, or any other

picture identification issued by a Federal, state, or local government agency),

- Identification by the supervisor of the donor or by an agency representative, or
- Other identification allowed under an agency's workplace drug testing plan.

If the identity of the donor cannot be established, the collector stops the collection.

Unacceptable forms of identification are:

- Identification by a co-worker,
- Identification by another donor,
- Non-photo identification (e.g., social security card, credit card, union or other membership cards, pay vouchers, voter registration card), or
- A faxed copy or photocopy of an identification document.

Chapter 6. Urine Specimen Collection

A. Collection Site Security

The collection site must be secure to prevent unauthorized access to specimens, collection supplies, and collection site records. A permanent site that is used solely for specimen collections must be secured at all times. At facilities that are not dedicated specimen collection sites, the area of the site used for specimen collections must be secured during the time a specimen is collected.

A collector must:

- Prohibit unauthorized personnel from entering the collection site during the collection;
- Perform only one specimen collection at a time;
- Restrict access to collection supplies before and during the collection;
- Ensure that only the collector and the donor are allowed to handle the unsealed specimen;
- Ensure that chain of custody is maintained and documented throughout the collection procedure,
- Ensure that Copy 1 of the CCF is enclosed with the specimen and sealed for shipment to the laboratory; and
- Ensure that specimens are transported to the test facility in a sealed and secure shipping container to eliminate the possibility of damage during shipment and to prevent undetected tampering.

B. Collection Supplies

The following items must be available at the collection site to conduct proper urine collections:

1. **Single-use plastic collection containers.** Each collection container must not substantially affect the specimen collected and must be:
 - Supplied as an individually sealed item using a tamper-evident system (e.g., in a sealed plastic bag, shrink wrapped, with a peelable or sealed lid, or another easily visible tamper-evident system),
 - Large enough to easily catch and hold at least 55 mL of urine, and
 - Graduated with volume markings clearly showing the volume (e.g., 45 mL).
2. **Single-use plastic specimen bottles.** Each specimen bottle with cap must not substantially affect the specimen collected and must be:
 - Supplied as individually sealed bottles with a tamper-evident system (e.g., using plastic bag, shrink

- wrap, with a peelable or sealed lid, or another easily visible tamper-evident system),
 - Able to hold at least 35 mL,
 - Leak-resistant (i.e., have a screw-on or snap-on cap that prevents leakage),
 - Marked clearly to indicate the minimum levels of urine to be poured into the bottle, and
 - Designed so that the required tamper-evident bottle label/seal from the CCF is not damaged when the donor initials it and has no overlap that conceals printed information.
3. **Temperature strips.** The temperature strips must be capable of temperature readings between 90°-100°F (32°-38°C). The temperature strips must accurately measure the temperature of the specimen and not contaminate the specimen. The strips may be affixed to the collection container as supplied or placed on the collection container after the donor gives the collection container with the specimen to the collector.
 4. **CCFs.** A CCF as supplied by the FTDTL .
 5. **Tamper-evident seals.** The CCF has a tamper-evident label/seal that is used to seal the specimen bottle. Occasionally, a tamper-evident label/seal provided with the CCF will not properly adhere to the specimen bottle (e.g., due to moisture, temperature, or specimen bottle material). If this occurs, see Chapter 6, Section C, Step 18 for instructions on using another tamper-evident seal.
 6. **Leak-resistant plastic bags.** The plastic bag must have two sealable compartments or pouches (i.e., one large enough to hold a specimen bottle and the other large enough to hold Copy 1 of the CCF).
 7. **Absorbent material.** The absorbent material is placed inside the leak-resistant plastic bag with the specimen bottle in case it leaks during shipment. The U.S. Postal Service and other express carriers require the use of absorbent material when shipping biological materials.
 8. **Shipping containers.** Boxes or bags used to transport specimens to a laboratory must be securely sealed to prevent the possibility of undetected tampering. It is not necessary to use a shipping container/mailler if a courier hand-delivers the sealed leak-resistant plastic bags containing the specimen bottles directly from the collection site to the laboratory.
 9. **Bluing agent.** Bluing agent is added to the toilet bowl and water tank to prevent undetected specimen dilution by the donor.
 10. **Secure temporary location.** It is the collector's responsibility to prevent unauthorized access to the specimen bottles and CCF. Prior to placement in a shipping container, the sealed leak-resistant plastic bag containing the specimen bottle and completed Copy 1 of the CCF must be kept:
 - Within the collector's line of sight, or
 - In a secure temporary location (e.g., locked in a refrigerator or cabinet).

Note: Specimens should NOT be exposed to high temperatures for an extended time. These conditions may affect the test results of a urine specimen.

11. **Disposable gloves.** HHS recommends that collectors use single-use disposable gloves while handling specimens. The Occupational Safety and Health Administration has specific standards addressing protection of employees who are exposed to potentially infectious body fluids (29 CFR Part 1910.1030).

C. Collection Procedure

1. Prepare the collection site to collect urine specimens:
 - Assemble supplies.
 - Ensure that there is bluing agent in the toilet. If no bluing agent is available or if there is an automatic flushing system, turn off the water supply and flush the toilet to remove any water in the toilet when possible.
 - Turn off the water supply or secure water sources inside the restroom.
 - The collector must provide a means for the donor to wash his or her hands before and after the collection. The collector must secure the water source after the donor washes his or her hands and restore the water supply after the collection, or provide another means (e.g., waterless cleanser, moist towelette).
 - If a water source inside the restroom cannot be turned off or secured, the collector must perform a monitored collection as described in Chapter 6, Section E below.
 - Remove any soap, cleanser, disinfectant, or other potential adulterants, and
 - Inspect and/or secure areas or items that could be used to conceal adulterants (e.g., false ceilings, ledges, trash cans, towel dispensers).
2. If a donor does not arrive at the collection site at the assigned time for the drug test, contact the Agency representative to obtain guidance on the appropriate action to be taken.
3. Begin the collection without delay when the donor arrives at the collection site. Do not wait because an authorized agency representative is late in arriving or because the donor states that he or she is not ready or is unable to urinate. **If the donor states that he or she is unable to provide a urine specimen, continue with the collection procedure through Step 11 below.**
4. Verify the donor's identity (see Chapter 5).
5. Describe the basic collection procedure to the donor and instruct the donor that he or she may read the instructions (see back of Donor Copy) for completing the CCF.
6. Answer any reasonable and appropriate questions that the donor has about the collection process.
7. Complete the collector's portion of the CCF (See Chapter 4).
 - Ensure that the pre-printed specimen identification number on the CCF matches the identification number on the specimen bottle label/seal.
 - Verify any urine collection demographic information in Step 1 of the CCF (i.e., information printed or annotated by the form supplier).
 - If the information is not present, record the information in Step 1 of the CCF to include:
 - The employer's name, address, telephone and fax numbers, and employer ID number (if applicable),
 - The specific MRO name, address, telephone number, and fax number,
 - Donor identification (SSN or employee ID number),
 - Specific testing authority for the agency drug test (if known),
 - Reason for test,
 - Drug test to be performed,
 - Collection site location, and

- Collector telephone and fax numbers.

8. Ask the donor to:

- Remove any unnecessary outer clothing (e.g., coat, jacket, hat, etc.).
 - The donor must not be asked to remove other articles of clothing (e.g., shirts, pants, dresses, undergarments) or to remove all clothing and wear a hospital or examination gown.
 - It is not necessary for the donor to remove the following items, unless the collector suspects that they are concealing something that may be used to adulterate or substitute a specimen:
 - Work boots or cowboy boots, or
 - A hat or head covering that the donor refuses to remove based on religious practice.
- Leave other personal belongings (e.g., briefcase, purse) with the outer clothing. The donor may retain his or her wallet.
 - To safeguard a donor's belongings, procedures may be established to secure the items during the collection. These may include:
 - An itemized receipt for belongings left with the collector,
 - Storage in a lockable cabinet (i.e., with access controlled by the donor) or
 - An envelope, box, or container secured with tamper-evident tape.
- Empty his or her pockets and display the items to ensure that no items are present that could be used to adulterate the specimen.
 - If there are no items that can be used to adulterate a specimen, instruct the donor to return the items to the pockets and continue the collection procedure. Go to Step 9.
 - If an item is found that appears to have been brought to the collection site with the intent to adulterate the specimen, use a direct observed collection procedure (see Chapter 6, Section D).
 - If an item that could be used to adulterate a specimen appears to have been inadvertently brought to the collection site, secure the item and continue with the normal collection procedure. Go to Step 9.
 - If the donor refuses to display the items in his or her pockets, stop the collection. This is considered a refusal to test (see Chapter 7, Section B).

9. Instruct the donor to wash and dry his or her hands under your observation.

- Liquid soap is preferred over bar soap, because bar soap gives the donor the opportunity to conceal soap shavings under his or her fingernails in an attempt to adulterate the specimen.
- After washing his or her hands, the donor must remain in the collector's presence and not be allowed access to any water fountain, faucet, soap dispenser, cleaning agent, or other materials which could be used to adulterate, substitute, or dilute a specimen.

10. Give the donor or allow the donor to select the collection kit or collection container (if it is separate from the kit) from the available supply.

11. Unwrap or break the seal of the kit or collection container. You may allow the donor to perform this step.

- Both the collector and the donor must be present.

- Only the seal on the collection container is broken at this time (i.e., the specimen bottle remains sealed/wrapped).

Note: If the donor has stated that he or she is unable to provide a specimen, at this point in the collection, request that the donor enter the restroom and attempt to provide a specimen. If the donor comes out of the stall with an empty collection container, he or she has demonstrated the inability to provide a specimen. Follow the Insufficient Specimen procedure in Chapter 6, Section F.

12. Direct the donor to:

- Take the collection container into the restroom/stall to be used for the collection,
- Provide a specimen of at least 45 mL,
- Not flush the toilet, and
- Return with the specimen as soon as he or she has finished completing the void.
 - You may inform the donor that the temperature of the urine specimen must be read within 4 minutes after the void to be valid. Longer wait periods may cause the temperature to be out of range and necessitate an observed collection.
 - A reasonable time limit may be set for completing the void.

Note: Neither the collector nor anyone else may go into the restroom with the donor, except in the case of a direct observed collection (see Chapter 6, Section D) or a monitored collection (see Chapter 6, Section E).

Note: Both the collector and the donor must maintain visual contact with the specimen from the time the specimen is transferred to the collector until specimen bottles have been sealed for shipment to the IITF or laboratory.

Note: After receiving the specimen from the donor, whenever practical, the collector may allow the donor to wash his or her hands and to flush the toilet. (The collector may inspect the toilet for any materials indicative of specimen tampering prior to flushing.)

13. When you receive the specimen from the donor, read the temperature strip affixed to or placed on the outside of the collection container.

- Do this within 4 minutes after the void.
- Mark the appropriate box in Step 2 of the CCF:
 - If the temperature is **within the acceptable range** (32° - 38°C; 90°-100°F), mark “Yes” and proceed with the collection procedure. Go to Step 14.
 - If the temperature is **outside the acceptable range**, mark “No” and perform a second, directly observed collection:
 - Complete the first collection before initiating the second collection, including Step 14 (examining the physical characteristics of the urine, noting any abnormal characteristics in the Remarks line of the CCF), and continuing with the procedure in Step 16.
 - Record an appropriate comment on the Remarks line in Step 2 of the CCF for the first specimen to indicate why two specimens were collected, including a cross reference to the specimen identification number of the second specimen.
 - Begin the collection of a second specimen using a direct observed collection procedure (see Chapter 6, Section D) and a new collection kit (i.e., a new collection container and a new CCF).

- Record an appropriate comment on the Remarks line in Step 2 of the CCF for the second specimens to indicate why two specimens were collected, including a cross reference to the specimen identification number of the first specimen.

Note: The first specimen and its CCF are sent to an HHS-certified laboratory regardless of the specimen volume.

Note: Both the first and second specimens must be sent to *an HHS-certified laboratory* for testing.

Note: If the donor refuses to provide a second specimen or leaves the collection site before the collection process is completed, this is considered a refusal to test (see Chapter 7, Section B).

14. Inspect the specimen for adulteration or substitution by examining the physical characteristics of the urine.
 - Note any abnormal characteristics such as:
 - Unusual color (e.g., specimen is blue),
 - Presence of foreign objects or material,
 - Unusual odor (e.g., bleach), or
 - Signs of adulteration (e.g., excessive foaming when shaken).
 - A specimen suspected of not being a valid urine specimen must be sent to an HHS-certified laboratory for testing.
 - If you observe any abnormal characteristic(s) that appears to be due to adulteration or substitution by the donor, immediately begin a second specimen collection using a direct observed collection procedure (see Chapter 6, Section D) and a new collection kit (i.e., a new collection container and a new CCF).
 - Record an appropriate comment on the Remarks line in Step 2 of both CCFs (i.e., for the first and second specimens) to indicate why two specimens were collected including a cross reference to the associated specimen identification number.
 - Complete the first collection by continuing with the procedure in Step 16.
15. Check the specimen volume to ensure that the specimen contains at least **45 mL** of urine.
 - If the specimen volume is at least 45 mL, complete the specimen collection procedure continuing with Step 16.

When the specimen volume is less than 45 mL, discard the specimen and immediately begin a second collection using the same procedures and the same CCF. Use a new collection container for the second collection.

Note: If the donor refuses to attempt to provide a second specimen or leaves the collection site before the collection process is completed, this is considered a refusal to test (see Chapter 7, Section B).

- When a second specimen must be collected, follow the Insufficient Volume procedure in Chapter 6, Section F.
 - When the donor hands you the second specimen, continue with the collection procedure, including Step 13 (checking specimen temperature) and Step 14 (examining physical

characteristics of the urine).

- If the donor is unable to provide at least 45 mL for the second specimen after a period of three hours, stop the collection procedure and report the failure to provide a sufficient specimen as described in the Insufficient Volume procedure in Chapter 6, Section F.

16. Unwrap the sealed specimen bottles in the donor's presence.

17. In the donor's presence, pour the urine from the specimen collection container into the specimen bottle and secure the lid/cap on the bottle.

18. Place the appropriate tamper-evident label/seal over the lid/cap of the bottle to ensure that the lid/cap cannot be removed without destroying the label/seal.

- **The donor must observe the sealing of the specimen bottle.**

- If the tamper-evident label/seal from the CCF does not adhere properly to the specimen bottle (e.g., due to moisture, temperature, specimen bottle material) or is accidentally broken or damaged during the collection process:

- Apply the unacceptable label/seal to the bottle, and
- Apply a second, separate tamper-evident seal to seal the specimen bottle.
 - Place the additional seal perpendicular to the CCF label/seal, to avoid obscuring information on the CCF label/seal,
 - Initial and date the second seal,
 - Ask the donor to initial the second seal, and
 - Provide a comment on the Remarks line in Step 2 of the CCF explaining why the second seal was used.

19. Discard any excess urine remaining in the collection container after the bottle has been filled with the appropriate volume of urine.

- The only exception is when the excess urine is being used to conduct clinical tests in conjunction with a physical examination that is required by the agency. No further tests may be conducted on the excess urine.

20. Write the date on the tamper-evident label/seal.

21. Ask the donor to initial the label/seal on the bottle, using care to avoid damage.

- If the donor fails or refuses to initial the seal, note this on the Remarks line in Step 2 of the CCF and complete the collection process. This is not considered a refusal to test.

22. Inform the donor that it is not necessary for him or her to continue observing the collection procedure after the bottle has been sealed, and that he/she is allowed to wash his or her hands.

23. Assist the donor in completing the donor portion of the CCF:

- Instruct the donor to read the donor certification statement in Step 5 on Copy 2 of the CCF.
- Instruct the donor to complete the donor portion on Copy 2 of the CCF:
 - Sign and date the certification statement,
 - Provide his or her date of birth,

- Print his or her name,
 - Provide day and evening contact telephone numbers.
- If the donor refuses to sign the form or to provide the other information, make a comment on the Remarks line in Step 2 of the CCF to that effect. At a minimum, print the donor's name where indicated. **Note:** This does not constitute a refusal to test.
24. Complete the collector chain of custody portion Step 4 on Copy 1 of the CCF:
- Print your name,
 - Sign where indicated,
 - Record the date and time of the collection, and
 - Record the specific name of the delivery service to which the specimen bottle is being released.
25. Separate Copy 1 of the CCF from the other four copies. Place Copy 1 and the specimen bottle inside the appropriate pouches of the leak-resistant plastic bag and seal the bag.
26. Separate Copy 5 of the CCF and give it to the donor.
- Remind the donor that he or she may list any prescription and over-the-counter medications on a separate sheet or on the back of the donor's copy (Copy 5) of the CCF. This information may help the donor to remember what medications he or she may have taken if he or she is contacted by the MRO.
- Note: This information must not be recorded on any other copy of the CCF or on the Remarks line of the CCF.**
27. Inform the donor that he or she may leave the collection site.
28. Prepare the sealed tamper-resistant plastic bag containing the specimen bottle and CCF for transport to the laboratory.
- Place the sealed specimen bag(s) to be shipped into a shipping container (e.g., box, express carrier mailer). Several specimen bags may be placed into one shipping container.
 - For specimens that will be hand-delivered from the collection site to the laboratory, it is not necessary to use a sealed shipping container. The courier must handle the specimen bags in a manner that protects the specimens from damage.
 - If the tamper-evident label/seal from the CCF is broken on a specimen bottle after the donor leaves the collection site, **the collection must be cancelled.**
 - Notify the agency's designated representative that the label/seal was broken on the specimen bottle.
29. Send Copy 2 of the CCF to the MRO and Copy 4 of the CCF to the agency's designated representative **within 24 hours after the collection or during the next business day.**
- Acceptable transmission methods include:
 - Faxing to a secure fax machine,
 - Sending a scanned image of the CCF copy to a secure computer, and
 - Mailing or transporting by courier.

- The transmission process must be coordinated between the collection site and the MRO to ensure that transmission procedures meet the MRO's or agency's requirements.
30. Submit the specimen to the laboratory **within 24 hours after the collection or during the next business day.**
- If the specimen is not shipped immediately, the collector is responsible for ensuring its security.
 - For specimens in a sealed plastic bag that has not been placed in a shipping container, take necessary steps to prevent any possible tampering or access by unauthorized personnel.
 - For specimen packages in a sealed shipping container, take necessary steps to protect the container from any possible damage or theft prior to pick-up by the designated delivery service.

D. Direct Observed Collection

A direct observed collection procedure may only be used when:

1. An agency has authorized a direct observed collection because a donor's previous drug test result was reported by an MRO as drug positive, adulterated, substituted, invalid without a legitimate medical reason, or cancelled because the specimen failed to reconfirm or could not be tested, or
2. At the collection site, an immediate collection of a second urine specimen is required in one of the following situations:
 - The temperature of the specimen collected during a routine collection is outside the acceptable temperature range.
 - There is an indication that the donor has tampered with the specimen (e.g., abnormal physical characteristic such as unusual color, excessive foaming when shaken, unusual odor).
 - The conduct of the donor clearly indicates an attempt to adulterate or substitute the specimen.
 - The donor has brought an item to the collection site for the purpose of:
 - Adulteration (e.g., a small vial containing a suspicious liquid),
 - Substitution (e.g., a small vial containing water or other liquid), or
 - Dilution of a urine specimen.

Before conducting a direct observed collection under Item 2 above, the collector must contact a collection site supervisor for concurrence with the collector's decision for a direct observed collection. The collector must make the agency representative aware that a situation exists warranting a direct observed collection and explain to the donor why a direct observed collection is being conducted. If the donor declines to allow a direct observed collection when one of the above circumstances has occurred, it is considered a refusal to test (see Chapter 7, Section B).

The procedure for a direct observed collection is the same as that for a routine collection except an observer (i.e., of the same gender as the donor) watches the donor urinate into the collection container. At the point in a routine collection where the donor enters the restroom with the collection container (see Section C, Step 12), a direct observed collection includes the following additional steps:

1. The individual serving as the observer enters the restroom with the donor.
 - The observer must be the same gender as the donor. **There are no exceptions to this requirement.**

- If there is no collector of the same gender as the donor, the collector or collection site supervisor must select another individual to serve as the observer. The individual must meet the HHS Mandatory Guidelines qualifications for an observer (see Chapter 1).
2. The observer must directly watch the urine go from the donor's body into the collection container. The use of mirrors or video cameras is not permitted. If the donor fails to follow the observer's instructions related to the direct observed collection, this is considered a refusal to test (see Chapter 7, Section B).
 3. With regard to chain of custody, the observer must never touch or handle the collection container unless the observer is also serving as the collector.
 4. After the donor has completed urinating into the collection container:
 - The donor and observer leave the restroom and the donor hands the collection container directly to the collector,
 - The observer must maintain visual contact with the collection container until the donor hands the container to the collector, and
 - If the same individual serves as both observer and collector, he or she may receive the collection container from the donor while they are both in the restroom.
 5. The collector checks the box for an observed collection in Step 2 of the CCF and provides the name of the observer (if applicable) and the reason for an observed collection on the Remarks line in Step 2 of the CCF. If there is insufficient room on the Remarks line, the collector may attach a separate document explaining the use of an observed collection to the CCF.
 6. The collector continues with the routine collection procedures (see Section C, Step 13).

E. Monitored Collection

A monitored collection procedure must be used when:

1. The collection is being conducted in a public restroom (e.g., when the agency's designated collection site is not available and there is an immediate need for a collection), or
2. The restroom used for the collection has a water source that cannot be disabled or secured.

If the donor declines to allow a monitored collection when one of the above circumstances has occurred, it is considered a refusal to test (see Chapter 7, Section B).

The procedure for a monitored collection is the same as that for a routine collection except an individual monitors the collection by checking for signs that the donor may be tampering with the specimen. At the point in a routine collection where the donor enters the restroom with the collection container (see Section C, Step 12), a monitored collection includes the following additional steps:

1. The monitor accompanies the donor into the restroom, and secures the restroom to ensure that no one else can enter during the collection process.
 - The monitor must be the same gender as the donor, unless the monitor is a trained medical professional (e.g., nurse, doctor, physician's assistant, technologist or technician) who is licensed or certified to practice where the collection occurs.
 - The monitor is not required to be a trained collector.

2. The monitor listens for signs of tampering with the specimen.
 - The monitor must remain in the restroom, but outside the stall while the donor is providing the specimen.
 - The monitor must not watch the donor urinate into the specimen container.
3. If there is evidence of specimen tampering, the monitor notifies the collector to immediately begin to collect a second specimen using a direct observed collection procedure (see Chapter 6, Section D).
4. With regard to chain of custody, the monitor must never touch or handle the collection container unless the monitor is also serving as the collector.
5. After the donor has completed urinating into the collection container:
 - The donor and monitor leave the restroom and the donor hands the collection container directly to the collector,
 - The monitor must maintain visual contact with the collection container until the donor hands the container to the collector, and
 - If the same individual serves as both monitor and collector, he or she may receive the collection container from the donor while they are both in the restroom.
6. The collector provides the name of the monitor (if applicable) on the Remarks line in Step 2 on Copy 1 of the CCF.
7. The collector continues with the routine collection procedures (see Section C, Step 13).

F. Insufficient Specimen

If a donor tells the collector that he or she cannot provide a specimen, the collector must begin the collection procedure regardless of the reason given. The donor demonstrates his or her inability to provide a valid specimen when he or she comes out of the restroom with an empty collection container. Immediately begin a second collection using the same procedures, the same collection container, and the same CCF.

1. If the donor indicates that he or she may be able to provide a specimen if given more time:
 - Offer the donor a reasonable amount of fluid to drink distributed reasonably through a period of up to 3 hours (e.g., an 8 ounce glass of water every 30 minutes, not to exceed 40 ounces over a period of 3 hours) or until the donor has provided a sufficient amount of urine, whichever occurs first. The donor is not required to drink fluids during the waiting period.
 - Instruct the donor to let you know when he or she is able to provide a sufficient quantity of specimen. It is recommended that you allow sufficient time to have only one additional attempt rather than having to document several unsuccessful attempts. Be sensitive to how frequently you ask a donor to attempt to provide a specimen.
 - Record the time of the attempt to provide a sufficient volume of specimen (e.g., on the Remarks line of the CCF).
 - The donor must remain under the direct observation of the collector to prevent the donor from possibly compromising the collection process.

Note: The collector must NOT under any circumstances combine urine collected from separate voids to create one specimen of sufficient volume.

2. If the donor states that he or she is unable to provide a specimen, or if the donor has not provided sufficient volume of specimen in **three hours** from the time of the donor's first attempt, **discontinue the collection** and:
 - Record the reason for not collecting the specimen on the Remarks line and mark the "None Provided" box in Step 2 of the CCF,
 - Notify the agency's designated representative of the situation,
 - Discard the urine collected (if any),
 - Give Copy 5 of the CCF to the donor and request that the donor leave the collection site,
 - Discard Copy 1 of the CCF (no valid specimen was collected), and
 - Send Copy 2 of the CCF to the MRO and Copy 4 of the CCF to the agency's designated representative within 24 hours or the next business day.
3. If the donor refuses to attempt to provide a specimen or leaves the collection site before the collection process is completed, this is a refusal to test. The collector must follow the procedure in Chapter 7, Section B.

Chapter 7. Miscellaneous Collection Issues

A. Donor Conduct

The collector should pay close attention to the donor's conduct during the entire collection process and take the following actions as necessary:

1. If the donor's actions or items on his or her person clearly indicate an attempt to tamper with (i.e., substitute, adulterate, or dilute) a specimen, conduct a direct observed collection (see Chapter 6, Section D) and document the reason on the Remarks line in Step 2 of the CCF.
2. If the donor's actions clearly indicate an attempt to substitute or adulterate a specimen and the donor has already provided a specimen:
 - Complete the collection procedure for that specimen and immediately begin a new collection using a direct observed collection procedure, a second CCF, and a new collection kit.
 - Provide appropriate comments in Step 2 on both CCFs (i.e., for the first and second specimens):
 - Note on the Remarks line whether the specimen is the first or the second of the two collections for the donor,
 - Write on the Remarks line the specimen ID number of the associated specimen,
 - Note on the Remarks line the reason for the second collection (i.e., the observed conduct or found items indicative of attempted substitution or adulteration), and
 - Document that the second collection was under direct observation by checking the appropriate box and writing the observer's name in the Remarks line (if the collector was not the observer).
 - Inform the agency's designated representative that a collection took place under direct observation and the reason for having done so.
3. If the donor fails to arrive at the assigned time:
 - Contact the agency's designated representative to obtain guidance on the action to be taken.
 - This is not considered a refusal to test.

B. Refusal to Test

An agency will take adverse action against an employee whose drug test specimen is reported as a refusal to test. The collector reports a “refusal to test” when:

1. The donor fails to cooperate with any part of the testing process (e.g., refuses to provide a specimen, refuses to display the items in his or her pockets at the beginning of the collection, or refuses to wash his or her hands at the beginning of the collection),
2. The donor declines to allow a direct observed collection when required, or fails to follow the observer’s instructions related to the direct observed collection,
3. The donor declines to allow a monitored collection when required,
4. The donor declines to continue the collection process when his or her first specimen has insufficient volume,
5. The donor leaves the collection site before completion of the collection (except for leaving before the collection has begun for a pre-employment test).
6. The donor possesses or wears a prosthetic device that could interfere with the drug test,
7. The donor admits to the collector that he or she has adulterated or substituted his or her specimen.

When reporting a “refusal to test,” the collector must:

1. Notify the agency’s designated representative by any means (e.g., telephone, secure fax machine, e-mail) that ensures immediate receipt of the refusal notification,
2. Document the refusal to test on the CCF with appropriate comments, signature, and date in the Remarks line of Step 2, and
3. Send all copies of the CCF to the agency’s designated representative.

Chapter 8. Collector Errors

The CCF is a forensic document and will be part of the litigation package if a specimen comes under legal challenge. The collector should **never** use correction fluid on the CCF, and should never overwrite or scribble out information recorded or printed on the CCF. Unclear or improper edits to CCF information (e.g., donor identification numbers, signatures) could compromise the legal defensibility of the document.

If the collector makes an error on a CCF, he or she should:

1. Make a line through the erroneous information, leaving the original information legible,
2. Write the correct information near (e.g., beside) the original annotation, and
3. Initial and date the change.

It is acceptable for the collector to cross out preprinted information on the CCF that is incorrect or inapplicable (e.g., collection site, MRO, laboratory, or employer information). The collector must use the procedures described above for changing the information on the form. This may be necessary in the event of unexpected collections (e.g., post-accident) or when CCFs at the collection site have outdated information.

There are three categories of collector errors:

1. Fatal flaws that result in a laboratory rejecting a specimen or an MRO cancelling a test,
2. Correctable flaws that result in a laboratory rejecting a specimen or an MRO cancelling a test unless the flaw is corrected by an acceptable explanation from the collector, or
3. Omissions and discrepancies on the CCF that are considered insignificant and do not cause rejection by the laboratory or cancellation by the MRO when they are infrequent (i.e., when a collector does not make the error more than once a month).

The collector must take **immediate** steps to provide an explanation to the laboratory or MRO when notified of an error. A laboratory holds specimens for a short time (i.e., a minimum of five business days) after the collector has been notified, before reporting the specimen as rejected for testing and discarding the specimen.

Agencies must investigate reported collection site deficiencies (e.g., specimens rejected for testing due to collector errors).

ATTACHMENT R – COMAR 17.04.09

Testing for Illegal Use of Drugs

http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=17.04.09.*

ATTACHMENT S – Collection Occurrence Sites

DRUG TESTING COLLECTION SITES
IN ALPHA ORDER BY CITY

<u>CITY</u>	<u>SITE #</u>	<u>AGENCY</u>	<u>ADDRESS</u>	<u>PHONE #</u>
ANNAPOLIS	0002	Anne Arundel County Health Department	3 Harry S. Truman Parkway	410-222-7134
ANNAPOLIS	0096	Maryland State Police Barrack "J"	610 Taylor Ave & Rowe Ave.	410-267-5800
BALTIMORE	0172	Baltimore City Detention Center	Jail Industries Building, 531 E. Madison Street	410-209-4131
BALTIMORE	0162	Baltimore Juvenile Justice Center	300 North Gay Street	443-263-8894
BALTIMORE	0050	Centralized Hiring Unit, Department of Public Safety and Correctional Services	6774-C Reisterstown Road	410-585-3470
BALTIMORE	0151	Institute for Emergency Medical Services Systems	653 West Pratt Street	410-706-0470
BALTIMORE	0149	Juvenile Services, Maryland Department of	One Center Plaza, 120 West Fayette Street	410-230-3454
BALTIMORE	0103	MD State Police - Barrack "R" (Golden Ring)	8908 Kelso Drive	410-780-2700
BALTIMORE	0179	MTC Baltimore Region Finance Office	924 Forest Street	410-234-1825 or 410-320-0543
BALTIMORE	0181	O'Brien House	521 E. Eager Street	410-230-1434
BALTIMORE	0122	Medical Services Unit, Dept. of Budget and Management	301 West Preston Street, Room 508	410-767-4627
BALTIMORE	0069	Workforce Technology Center	2301 Argonne Drive	410-554-9100
BALTIMORE	0053	Maryland State Department of Education	200 West Baltimore St.	410-767-0013
BALTIMORE	0052	Military Armory	219 29 th Division St.	410-234-3813
BEL AIR	0090	Maryland State Police - Barrack "D" (Bel Air)	1401 Belair Road	410-879-2101
CAMBRIDGE	0008	Dorchester County Health Department	3 Cedar Street	410-901-8124
CAMBRIDGE	0043	Eastern Shore Hospital Center	5262 Woods Road	410-221-2330
CATONSVILLE	0114	RICA - Baltimore	605 S. Chapel Gate Lane	410-368-7828
CATONSVILLE	0015	Spring Grove Hospital Center	55 Wade Avenue, Preston Building	410-402-7408
CHELTENHAM	0038	Cheltenham Youth Facility	11001 Frank Tippet Road	301-396-4342
CHESTERTOWN	0175	J. DeWeese Carter Youth Facility	300 Scheeler Road	410-778-7379

COLLEGE PARK	0102	Maryland State Police - Barrack "Q" (College Park)	10100 Rhode Island Avenue	301-345-3101
COLUMBIA	0051	Maryland School for the Deaf - Columbia	8169 Old Montgomery Road	410-480-4517
COLUMBIA	0017	Howard County Department of Health	8930 Stanford Blvd.	410-313-7524
CUMBERLAND	0182	DJS Youth Center in Cumberland	1 James Day Drive	301-722-1627
CUMBERLAND	0089	Maryland State Police - Barrack "C" (Cumberland)	1125 National Highway	301-729-2101
CUMBERLAND	0076	Thomas B. Finan Center	Country Club Road	301-777-2405
CUMBERLAND	0164	Western Correctional Institution	13800 McMullen Highway, SW	301-729-7030
EASTON	0095	Maryland State Police - Barrack "I" (Easton)	7053 Ocean Gateway	410-819-4747
FORESTVILLE	0098	Maryland State Police - Barrack "L" (Forestville)	3500 Forestville Road	301-568-8101
FREDERICK	0170	Department of Juvenile Services in Frederick	801 N. East Street, Suite 3	240-629-3037
FREDERICK	0009	Frederick County Health Department	300 Scholls Lane	301-600-3444
FREDERICK	0186	Maryland School for the Deaf - Frederick	400 S.Carroll Street New Elementary Building Nurse's Station-Rm. S145	301-360-2007
FREDERICK	0178	Maryland State Police – Barrack “B”	110 Airport Drive East	301-600-4151
GLEN BURNIE	0101	Maryland State Police – Barrack “P”	6800 Aviation Blvd.	410-761-5130
HAGERSTOWN	0083	Maryland State Police - Barrack "O" (Hagerstown)	18345 Col. Henry K. Douglas Drive	301-739-2101
HAGERSTOWN	0184	Potomac Center	1380 Marshall Street	240-313-3561
HAGERSTOWN	0063	Western Maryland Center	1500 Pennsylvania Avenue	301-791-4495
HAGERSTOWN	0125	Western Maryland Correctional Hiring Unit	18411 Roxbury Road	301-745-3673
HAGERSTOWN	0180	Western Regional Center -	18415 Roxbury Road	410-767-0023
JESSUP	0148	Clifton T. Perkins Hospital Center	8450 Dorsey Run Road	410-724-3014
JESSUP	0126	Division of Correction	7601 Oak Ridge Road	443-755-9680 x303 <u>or</u> x306
JESSUP	0176	Maryland Correctional Pre-Release System	7931 Brock Bridge Road (Off Route 175)	410-540-6201
JESSUP	0087	Maryland State Police - Barrack "A" (Waterloo)	7777 Washington Boulevard	410-799-2101
JESSUP	0173	Patuxent Institution	7555 Waterloo Road	410-799-7868
LAUREL	0124	Waxter Children's Center	375 Red Clay Road	410-792-7416

LEONARDTOWN	0105	Maryland State Police - Barrack "T" (Leonardtown)	23200 Leonard Hall Drive	301-475-8955
MIDDLE RIVER	0187	Warfield Air National Guard Base	2701 Eastern Boulevard	410-918-6538
NORTH EAST	0104	Maryland State Police Barrack "F"	2433 West Pulaski Highway	410-996-7800
OCEAN CITY	0020	Worcester County Health Department	WACS Center, 11827 Ocean Gateway	410-213-0202
PARKVILLE	0163	Charles H. Hickey, Jr. School	9700 Old Harford Road	410-663-7654
PERRYVILLE	0099	Maryland State Police Barrack "M"	15 Turnpike Dr.	410-537-1150
PIKESVILLE	0068	Maryland State Police (Headquarters)	1201 Reisterstown Road, Building "B"	410-653-4298
PRINCESS ANNE	0195	Maryland State Police - Barrack "X" (Princess Anne)	30581 Perry Road	443-260-3700
ROCKVILLE	0100	Maryland State Police Barrack "N"	7915 Montrose Road	310-424-2101
ROCKVILLE	0116	John L. Gildner RICA	15000 Broschart Road	301-251-6816
ROCKVILLE	0040	Noyes Children's Center	9925 Blackwell Road	410-792-0865
SALISBURY	0161	Deer's Head Center	351 Deer's Head Road	410-543-4033
SALISBURY	0159	Holly Center	926 Snow Hill Road	410-572-6283
SALISBURY	0037	Salisbury District Court	Multi-Service Center, 201 Baptist Street	410-543-6600
SAVAGE	0150	Internal Investigative Unit	8510 Corridor Road, Suite 100	410-724-5720
SYKESVILLE	0057	Springfield Hospital Center	6655 Sykesville Road (off Route 32)	410-795-2100
WESTOVER	0077	Eastern Correctional Institution	30420 Revells Neck Road	410-845-4000
WESTMINSTER	0093	Maryland State Police Barrack "G"	1100 Baltimore Boulevard	410-386-3000
WHITE PLAINS	0007	Charles County Health Department	4545 Crane Highway Building	301-609-6631

APPENDIX 1

A.1 Abbreviations and Definitions

For purposes of this IFB, the following abbreviations or terms have the meanings indicated below:

1. **Agency** – The specific State Executive, Judicial or Legislative branch government entity, including the University System of Maryland, that may request a Collection Occurrence through the Contract issued as a result of this RFP.
2. **Agency Technical Representative (ATR)** – The person assigned by the Agency to ensure compliance with the State’s drug testing requirements.
3. **Bid** – A statement of price offered by a Bidder in response to an IFB.
4. **Bidder** – An entity that submits a Bid in response to this IFB.
5. **BPW** – The Maryland Board of Public Works.
6. **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days exclude State Holidays (see definition of “Normal State Business Hours” below).
7. **CCF – (Custody and Control Form)** – The form provided by the FTDTL that accompanies each specimen and documents chain of custody.
8. **CFR** – Code of Federal Regulations.
9. **CJIS** – Criminal Justice Information System – A program administered by the Department of Public Safety and Correctional Services that is responsible for receiving, maintaining & disseminating Maryland’s
10. **Collection Occurrence** – A single specimen collection or series of specimen collections scheduled by an ATR to occur at a specific collection site on a specific date at a specific time or specific span of time.
11. **Collector** – An individual hired or contracted with the Contractor who is assigned to travel to collection sites and conduct urine specimen collections in accordance with the provisions of this Contract
12. **Collector Error** – A mistake committed by the Collector during the collection process.
13. **COMAR** – Code of Maryland Regulations available on-line at www.dsd.state.md.us.
14. **Contract** – The Contract awarded to the successful Bidder pursuant to this IFB. The Contract will be in the form of IFB **Attachment M**.

15. **Contract Commencement** - The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. See IFB Section 1.4.
16. **Contract Manager (CM)** – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Manager may authorize in writing one or more State representatives to act on behalf of the Contract Manager in the performance of the Contract Manager’s responsibilities.
17. **Contractor** – The selected Bidder that is awarded a Contract by the State.
18. **Department or DBM** – Department of Budget and Management.
19. **Donor**- The employee directed to produce a urine sample for drug testing.
20. **Drug Testing Guidelines** – The guidelines promulgated by SAMHSA for federal workplace drug testing programs in the Urine Specimen Collection Handbook
21. **eMM** – eMaryland Marketplace (see IFB Section 1.8).
22. **FTDTL** – Forensic Toxicology Drug Testing Laboratory.
23. **Go-Live Date** – The date, as specified in the Notice to Proceed, when the Contractor must begin providing all services required by this solicitation. See IFB Section 1.4.
24. **Invitation for Bids (IFB)** – This Invitation for Bids solicitation issued by the Department of Budget and Management, with the Solicitation Number and date of issuance indicated in the IFB Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors), including any addenda.
25. **Immediately** – An action that is to be acted upon in a timely manner in priority to any other action that would normally occur.
26. **Key Personnel** – The Contractor’s Representative or Contract Manager.
27. **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
28. **Minority Business Enterprise (MBE)** – Any legal entity certified as defined at COMAR 21.01.02.01B(54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
29. **Medical Review Officer (MRO)** – A licensed physician with knowledge of substance abuse disorders who verifies whether the results are positive or negative.

30. **Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays.
31. **Notice to Proceed (NTP)** – A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date. The start date listed in the NTP is the Go-Live Date, and is the official start date of the Contract for the actual delivery of services as described in this solicitation. After Contract Commencement, additional NTPs may be issued by either the Procurement Officer or the Department Contract Manager regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
32. **Procurement Officer** – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (Attachment A), including being the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.
33. **SAMHSA** – Substance Abuse & Mental Health Services Administration of the U.S. Department of Health & Human Services.
34. **Scheduler** – An individual employed by the Contractor and designated by the Contractor to be responsible for scheduling urine specimen collections as requested by ATRs.
35. **Specimen** – The urine collected for testing purposes.
36. **State** – The State of Maryland.
37. **Total Bid Price** - The Bidder's total price for services in response to this solicitation, included in the Bid in Attachment B – Bid Form, and used in determining the recommended awardee (see IFB Section 4.9).
38. **Veteran-owned Small Business Enterprise (VSBE)** – a business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
39. **Witness** – An agency employee that observed the explanation of the order to test including its policy and process with applicable signatures to and by the donor.